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Supreme Court of the United States

OCTOBER TERM, 1958.

No. 853

UNITED MINE WORKERS OF AMERICA
Petitioner

v.

MEADOW CREEK COAL COMPANY, INC.
Defendant.

REPLY BRIEF OF MEADOR CREEK COAL COMPANY TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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MEADOW CREEK COAL COMPANY, INC.

REPLY BRIEF OF MEADOR CREEK COAL COMPANY TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

STATEMENT OF THE CASE

The jurisdiction of the Court, as alleged in the complaint, is invoked under Title 29 U.S.C.A., 187, (the Labor-Management Relations Act), and also invoked under Title 28 U.S.C.A., Sections 1331, 1332 and 1337 (R. 7a). The basis of the recovery sought by the plaintiff was the damages suffered by it to its business as the result of the unlawful actions on the part of the Petitioner herein, in violation of Federal statutes and of the Common Law of Tennessee, which under both laws only constitute one cause of action, viz., damage to its business.

The real crux of the lawsuit was the violation by the petitioner of the Labor-Management Relations Act, hereinafter referred to as the Taft-Hartley Act, and the common law of Tennessee against a conspiracy to damage the business of the Mining Company. Therefore, the two main issues presented to the District Court was to determine the rights of the Mining Company under the Federal statute, viz., the Taft-Hartley Statute, and under the Common Law of Tennessee.

Neither side demanded a jury, therefore the case was tried by the Court, whose duty it was to determine both the facts and the law applicable to the facts so found by the Court. Eleven days were consumed in the hearing of the evidence in the case by the Court, at which time the Court announced that before he heard the oral argument the Court asked that two separate briefs be filed by both sides, one a brief of the facts, and the other a brief of the law applicable thereto. Long and rather exhaustive briefs were filed of the facts in the case, as well as the law, after which the Court heard oral argument, which was quite full and lengthy. In due time thereafter the District Court delivered its opinion, in which a very detailed and exhaustive state of facts were found by the District Court. These facts were numbered by the Court, and were 41 pertinent facts that were found and established by the Court. This was followed by the District Court's conclusions of the law, resulting in the entry of a judgment in favor of the Mining Company in the sum of $300,000.00 compensatory damages, and $100,000.00 punitive damages. Both of these amounts were allowed under and by authority of the Common Law of the State of Tennessee. The District Court did not find as a conclusion of law that the Taft-Hartley Act was violated by the Petitioner, neither did the Court

find that the Taft-Hartley Act was not violated by it, but did clearly find that there was involved a very substantial Federal question, and therefore, there being only one cause of action, gave the Court jurisdiction to determine the case under the laws of Tennessee.

PETITIONER ATTACKS CONCURRENT FINDING OF FACTS

The petition for certiorari filed herein makes a very unusual, and we insist, absolutely unjustified attack upon the findings of fact of the District Court, and upon the findings of fact by the Court of Appeals, which are the same as that of the District Court, and which therefore become a concurrent findings of fact of the two Courts, which we insist is the final facts in the case, and which will be accepted by this Honorable Court without reviewing same. The petition herein asking this Honorable Court to review the facts constitutes the fifth time that demand has been pressed for adoption by the petitioner, and which has been refused four times. First, counsel representing the petitioner herein prepared and filed a long, many page brief with the District Court insisting upon the facts, as it does now in its petition herein. It was followed by long oral argument before the District Court, insisting upon the same facts now being insisted upon in the petition, and that Court, who saw the witnesses on the stand, declined to accept such facts, and found that they were not supported by the evidence in the case. In the Court of Appeals many pages in the long brief filed therein by the Petitioner herein insisted upon that Court to find and determine facts, the same as now is being insisted in the petition, and this was followed by extensive oral argument in that Court, urging and insisting upon that Court to agree with the Petitioner

herein that the Trial Judge was wrong in the finding of its facts, and that Court, in a rather exhaustive opinion, refused to adopt the facts submitted by the Petitioner, and expressly set out in detail, in the opinion of that Court the facts as the evidence clearly justified, just as the District Court had determined. Therefore, we insist if there ever was a case where the rule of concurrent finding of facts by the two lower Courts should apply, it is this case.

Our distinguished adversaries have spent so much time and effort in trying to impose their idea of the facts in the case, and having been repelled each and every time, they show signs in the petition herein of being somewhat exasperated, and in their zeal make reference in the petition to the Court of Appeals, it seems to us, in such manner as should have been omitted. To illustrate what we mean, on page 62, paragraph 5, of the petition, we quote:

> "In its approval, the Sixth Circuit did no more than to parrot the District Court . . ."

Also, in the same paragraph of the petition, is found the following language:

> "Unless by certiorari, this Court reviews and corrects the manifest errors committed by the District Court, with the *imprimatur* of a Federal Court of Appeals, a gross miscarriage of justice will have been promoted . . ."
>
> (Petition, 62.)

The Mining Company insists that the concurrent findings of fact by the two lower Courts is binding in this Court, and will be accepted, and it seems to us that there are exceptional reasons why the rule should apply to this particular case, because of the full presentation

of Petitioner's insistence of the facts presented both by oral argument and briefs to two Courts, and both Courts have found against it. And also the detailed manner in which not only the District Court found the facts, but the narration of the facts in the opinion of the Court of Appeals is unusual, and makes them clear, and it seems to us that it should be final. We cite, in support of this rule established by the Courts, the case of *Allen* v. *Trust Company of Georgia*, 66 S. Ct., 392, 326 U.S. 630. In that case the Court said:

> "Here two Courts have resolved that question in favor of respondent. They have found, as we have said, that Mr. Spaulding established the trusts to meet the necessities of his children by giving them property, free of all claims, tax or otherwise; and that in 1937 he released the power to amend to accomplish the purpose which he originally had, but which he later discovered had not been achieved. Those findings are sufficient to overcome the statutory presumption that the gifts being made within two years of Mr. Spaulding's death, were made in contemplation of death. Those findings, being concurrent findings of the two lower Courts, will be accepted here without much examination of the evidence."

A little further on in the Court's opinion, the Court said, speaking of the concurrent findings of fact,

> "This is a finding of fact which we are not at liberty to disturb on this record."
> 66 S.Ct., 392.

The Court in support of the above quotation cited the case of *United States* v. *O'Donnell*, 303 U.S., 501, 58 S. Ct., 708.

Now while we think it really unnecessary to state the facts found by the District Judge, and also by the Court of Appeals, yet there have been so many misstatements in the petition concerning the facts, and in order to get the real conduct and actions of the petitioner before the Court, we desire to narrate the facts which were found by the District Judge and the Court of Appeals, and in fact with practically no denial of these facts in the whole record. The petitioner's proof concerning these facts found by the Courts was purely negative as the record will disclose. These facts so found are narrated as follows:

FACTS NARRATED, AS FOUND BY TWO LOWER COURTS

The Meadow Creek Coal Co. had been engaged in mining of coal from 1935 on up to and past the date of this trouble on January 12, 1948, and had never had any labor troubles of any type or character up to January 12, 1948, at which time there were 169 employees actively engaged; that the petitioner herein was an unincorporated labor organization, with a membership of over 300,000; that it functioned under a written constitution with its headquarters in Washington, D. C., with District and Local offices in all of the States and in Canada; that it owned buildings in Washington, D. C., and owned real estate and personal property there. That it operated with a President, Vice President and Secretary and Treasurer, and carried on the business as detailed in that finding by the Court, the same as that of corporations; that it collects dues from members of all Locals at the rate of $4.25 a month, $2.25 of this is kept in Washington, the other sent to the District and to the Locals. It has a right to sue

and to be sued, and other details of functions which it had and which it exercised.

In 1944 the Petitioner herein called on Mr. Ray, the President of the Mining Company, and claimed that they had a majority of its employees that wanted to form a union and to negotiate a labor contract with the petitioner. Mr. Ray suggested then that they have an election, which they did have, and which was supervised by the National Labor Relations Board, and less than one-third of those voting voted in favor of the Union.

In the fall of 1946 the Petitioner sent J. W. Ridings, a member of the International Board, L. H. Bell, an International representative, Hugh Brown, an International representative, and Ernest Stulz, a representative of District 19, into Putnam County, Tennessee and adjacent counties, to organize all mines that did not have a contract with the Petitioner. These men, so sent and representing the Petitioner, succeeded in organizing the Workers in several mines in the area, but had failed to organize the employees of the Mining Company herein. So, after having worked some sixteen months without success, late in December, 1947, the representatives of Petitioner herein determined to close down the Mining Company's mine by force, and these representatives conspired with members of the other Locals in that part of Tennessee and Kentucky to go on to the property of the Mining Company in force and in large numbers on January 12, 1948, and in furtherance of this conspiracy, on January 12, 1948, approximately 200 members of petitioner formed a motorcade at Sparta, Tennessee, 22 miles from the mine, and marched on to the mine in a body, and arrived there about 2:30, just as the night

shift and the day shift were changing in the mine. The Petitioner, through its representatives there, blockaded the private road of the Mining Company from the highway to the mine, and placed cars at points near the highway, and would not allow customers to enter the property. That some of these 200 men, who were armed, intercepted the Mining Company's employees and by threats of bodily harm to them and their families, demanded them to become members of the Union. The mob crowded around in front of the commissary, and some one backed a truck up against the store, and three speeches were made, by J. W. Ridings, Hugh Brown and Howard Madewell, who was president of a Local some forty miles from there. In those speeches they told the employees of the Mining Company, both the day and night shifts, 169 in number, among other things, that the Plaintiff's mine would not run another day unless the Company signed a contract with the Union.

Upon arrival at the mine on January 12, 1948, Ernest Stultz, the representative of District 19, Howard Madewell, President of the Local at Wilder, Tennessee, who were the first ones to arrive of the motorcade of about seventy-five cars; when they got out of their car at the mine they told Manuel Powell, a supervisor employee of the Plaintiff, that they had come to shut down the mine, without any election, and it would stay closed until the Company signed a contract with the Union.

As result of the action of the mob in trespassing upon Plaintiff's property and threatening its employees and its officers, the night shift did not enter the mine that night, and on the following day only eight to twelve men of the 169 employees reported for work. Plain-

tiff was unable to operate the mine with the small number of men, although it kept the mine in operable condition, but was unable to recruit sufficient force of workers to resume mining.

The purpose of Petitioner in organizing and directing the march on the Plaintiff's mine was to close the operation by force, and to keep it closed until Plaintiff signed a labor contract with defendant.

The Petitioner did not represent a majority of the employees of Plaintiff; and yet, on January 9, 1948, just three days before the unlawful march on the mine, J. W. Ridings and Hugh Brown, International Representatives of Defendant, called upon the President of Plaintiff, Mr. Ray, at his home, and told him again that the petitioner represented a majority of his employees, that they wanted to talk to him about a collective agreement or bargaining contract. No contract was presented, but Mr. Ray told these representatives of Petitioner that if his employees wanted the United Mine Workers to represent them he would be glad to discuss it with them at any time.

The Mining Company was given absolutely no advance notice of Defendant's purpose to march a mob of men on the mine, and it was completely surprised thereby. The first and only time that the representatives of Petitioner ever called upon the management, from the time of the election in 1944, was on January 9, 1948. No meetings had been requested by the representatives of Petitioner, before the mob closed the mine on January 12, and none sought after January 12th. On January 13, 1948, the day after the mob had closed the mine, J. W. Ridings, Petitioner's representative, who was in charge for Petitioner, left Tennessee and went to Virginia, and did not return for a period

of two weeks. Mr. Ray, the President of the Mining Company, stayed at the mine for nine days after January 12, 1948, even though his life had been threatened, he then went to Florida, and although his address in Florida was furnished to the representatives of the Union, they did not get in touch with him. He returned from Florida to the mines early in March, and although J. W. Ridings knew that Mr. Ray was in Monterey, having returned from Florida, and that he remained in Monterey for two weeks, yet no representative of the Petitioner tried to get in touch with him, or to have any meeting with Mr. Ray.

After Mr. Ray had failed to get the mine opened, and deciding that, on account of the animosity exhibited by defendant toward him individually, threats of his life having been delivered to him, he decided to set up a new company to operate the mine and deliver the coal to plaintiff in railroad cars or on trucks at the mouth of the mine. In furtherance of this plan the Tennessee Coal Company was incorporated under the laws of Tennessee, and it was to produce coal to the mouth of the mine, and was to be paid by the Mining Company the cost of production, plus 10 cents per ton, the coal of course remaining that of the Mining Company, and was received by it at the mouth of the mine, and sold on the market. The Tennessee Coal Co. at no time had any interest in the coal, but only the contract to mine and produce the same. This plan was adopted by the Mining Company in an effort to get the mine running; and to reduce the damage suffered by the Mining Company on account of its mine being closed. The Mining Company rendered aid and assistance to the Tennessee Company in the effort to mine and produce coal from the mine, and even paid some of the salaries of the administrative officers.

The Mining Company, when first opening this mine and began to produce coal, did not have a railroad to the mines, and was limited to truck transportation and deliveries in the movement of its coal. This continued until the railroad was built about two years prior to the raid on the mine on January 12, 1948. Due to this lack of railroad, the Mining Company had built up and had a very unusual truck trade for the movement fo its coal, and even after the railroad was built a large portion of its coal was still sold to and moved by trucks. On January 12, 1948, the Plaintiff had in excess of 500 truck customers scattered over a large area in Tennessee and some in Kentucky, and as a matter of fact, there was in excess of 100 trucks at the mine for coal on January 12, 1948. There were some trucks that went to the mine for coal on January 12, 1948, that were forced to leave empty because they were prevented by the mob assembled by petitioner at the mine on that day from entering the property. Trucks approaching the mine for coal were met on the private road, which was blocked by representatives of the defendant, some of whom were armed with guns, and the truck drivers were told by members of the mob to get out and away from there, and not to come back until the management of the Company had signed a contract. One truck was at the mine being loaded with coal when the mob arrived. Some of the members of the mob climbed upon the running board of the truck and told the driver that that would be the last load of coal that would go away from that mine until the Union contract was signed by the management. Also, a short while thereafter, Ernest Stulz, one of the promoters of this mob, went to a coal dealer in Crossville Tenn., who had two trucks hauling from the mine up to January 12th, and threatened to blow up his place of business if he even sold the coal that came from the Plaintiff's mine.

In Finding of Fact No. 25, the District Court said:

> "The Court finds that the drivers and owners of the 500 or more trucks that had been doing business with the plaintiff at the mine were placed in such fear of bodily harm that they did not return to the mine for coal until a contract was signed by the management with the defendant in July, 1948."

The District Court found that on June 23, 1948, a portion of the railroad track of the Tennessee Central Railroad which served the Mine Company's mine was destroyed by dynamite explosion, and that this act placed the employees of the Tennessee Central Railroad in fear of great bodily harm, and caused them to refuse to transfer coal from the plaintiff's mine; and, further, that the evidence concerning this dynamiting of the railroad track on Plaintiff's property showed that the United Mine Workers of America had possessed, handled and transported dynamite on the same night that the railroad track was blown up near to the point where the dynamiting took place, and that two members of the Petitioner's Union were arrested and placed in jail at Cookeville; that Mr. Bell, who was Mr. Ridings' next man, and an International Representative of the Petitioner, visited these men in jail, and carried them cigarettes and things to eat, and that on the 13th day of July, 1948, when the contract between the petitioner and the Tennessee Coal Co. was executed, Mr. Ridings, who was in charge of the whole campaign from the beginning, and who represented the petitioner in the making of the contract, requested the President of the Tennessee Coal Company, Mr. Allred, to drop the prosecution against these two men; and the District Court also found, in view of all evidence and circumstances, that it was a reasonable conclusion that the

Petitioner herein was responsible for the dynamiting of the railroad track. The Court also found that due to the acts and conduct above set out, which placed the employees of the Railroad Company in such fear that they refused to place cars at Plaintiff's mine, and refused to handle or transport any coal the product of the Mining Company, and the Railroad Company ceased to do business with the Mining Company for the full period of June 23, 1948, to July 14, 1948; also that on July 2, 1948, the Defendant, through its representatives, called a meeting of members of various locals in and around the area, and they did meet before daylight on the morning of July 2d, planning to make another march or raid on the mine, and to force its closing. The mine was not being operated, they learned, and therefore did not make the raid. But some fifteen or twenty of them, led by Willard Clemons, went out on the road where they knew that some employees of the Mining Company would be coming to the Mine, and met three of them in a car, made them get out, told them that their days in operating that mine without a Union were ended, and told them to tell the other employees that that was true. They drew pistols on them, and abused them in very vile language. That during the time between January 12, 1948, and July 13, 1948, when the contract was signed, the defendant had made arrangements with a large number of merchants in the vicinity to supply employees of the Mining Company who had refused to return to the mines for work, with groceries and other merchandise. A large number of men who were staying out from work took advantage of this offer, and that the amount of money paid by this defendant to these merchants for the benefit of those men who were not going back to work was in excess of $70,000.00; and the Court further found that this money was paid by the Defendant for

the benefit of such employees to keep them from returning to work for the petitioner. That the Constitution of Petitioner prohibited the use of its funds for the payment of any sick benefits or damage of any kind; that this provision in the constitution was in effect during the whole of the year 1948, and yet the Defendant paid the sum of $5,000.00 out of its funds, being a check signed by Mr. John L. Lewis, President of Petitioner, and delivered it to Clemons by J. W. Ridings, the man who had been in charge for the petitioner all the while; and that this happened after a letter had been written by Mr. Clemons to Mr. John L. Lewis telling him of his activities in trying to organize the Mining Company's mine, and about his holding up the men on the way to the mine, and about his being shot a few days later. A financial statement was demanded of the petitioner, and a statement was filed simply showing the amount of cash and bonds on hand January 1, 1957, of $20,976,046.76. The Court said, in its Finding of Fact No. 36, as follows:

> "The defendant in closing the plaintiff's mine, and in keeping it closed, by force, by threats of bodily harm, and by acts of violence, and in conspiring with its members to accomplish the same purpose, acted wilfully and wantonly, and with the intent to damage the plaintiff's business.

The Court then found that the condition of plaintiff's mine on January 12, 1948, was in good condition, unusual vein of coal averaging 5½ feet in thickness. Working conditions in the mine were good; that the Plaintiff had been developing the mine and increasing the output, and it was on January 12, 1948, and had been for some time prior thereto, producing over a thousand tons of coal per working day; and that the prospects for increase in output were good. That the

Mining Company had mined and sold, during the year 1947, 217,179.77 tons of coal from the mine, about one-third of which was transported by truck, and the remainder by railroad. At the end of the year 1947 the Mining Company had made a net profit on the business for that year of $374,149.17; that the Mining Company had a new contract with the Tennessee Valley Authority for a large quantity of coal to be shipped daily during 1948, and the price to be paid for this coal was $5.00 per ton, f.o.b. mine, and it was only for the low grade coal known as "fines", or slack; and that the truck coal, on January 12, 1948, and just prior thereto, had an average price of $5.91 per ton at the mine, and these prices prevailed on January 12th, and continued to increase during the whole of that year, and that the average price of all truck coal sold from the mines loaded in the year 1948 was $7.55 per ton. The Court also found that the mine was operated nine working days between January 1st and January 12, 1948, and the coal was sold at a net profit to the Mining Company for the nine days for a total amount of $30,109.71—which was an average net profit per ton of $3.13.

The Court then said, summing up the whole of the facts found, based on all of the evidence, and on the whole record, and in the light of the entire evidence, the Court finds that the unlawful conduct of the petitioner in closing the mine by force, by a large mob, by threats, by violence, and other wrongful means, directly caused the Mining Company to suffer damages to its business for the year 1948, principally for the first half of that year, and considering the volume of business and profit for the year 1947, the plaintiff's prospects for increased business, and lower cost, for 1948, the contracts which the plaintiff had made, the general conditions which prevailed in the industry, and the

entire record, the Court is of the opinion and finds that a fair amount to compensate the Mining Company for its loss on account of the unlawful conduct of the defendant is the sum of $300,000.00.

The narration above set out of the findings of the District Court, and concurred in and expressly approved in detail by the Court of Appeals, is supported by the evidence in the case in each the every instance.

In the brief filed by the Mining Company in the Court of Appeals there was set out each and every one of these findings of fact by the District Court, forty-one in number, and reference to the Appendix which has been filed as the record in this case to abundantly support each and every finding of fact by the District Court. The facts were fully argued before the Court of Appeals, and on the first page of the opinion of that Court this language is used:

> "The judgment of the Court was based upon forty-one separate findings of fact—all supported by substantial evidence, and not clearly erroneous." (App. to Petition)

This same approval was given by the Court of Appeals to the 41 findings of fact by the District Court in practically the same language as above quoted several times during the opinion of that Court. The Court of Appeals heard this case on October 23, 1958, and delivered its opinion on January 21, 1959, three months after it was orally argued. That Court spent a great deal of time and consideration, and some eight pages of the first part of the opinion, finding the facts, which correspond with those of the Court below.

The detailed findings of fact by the District Court appear in printed record herein 31a to 42a and also the opinion of the Court of Appeals will be found in Appendix II to the petition.

The real truth concerning the facts found by these two Courts is that there is practically no controversy or no dispute by any evidence of any probative value. This case is really unusual from that viewpoint, because in most contested lawsuits there are sharp conflicts in the evidence offered by the two sides, but in this case the testimony offered by the Mining Company stands practically without denial or explanation.

The petitioner introduced thirteen witnesses on the trial, eleven of these witnesses were purely negative. Most all of them were members of the mob that made the raid on the mine on January 12th. None of these eleven witnesses denied a single threat or other act of violence that was proven by the numerous witnesses of the Mining Company that happened there on the 12th of January, or denied a single threat or violence that happened away from the mines after it was closed. Neither one of these eleven witnesses testified contrary to a single fact found by the District Court, and Court of Appeals. Each and all of them simply said that they did not see or hear those threats and acts of violence, and yet each of them also said that each and all of the threats and acts of violence could have been said or done, and they would not have heard or seen them. In order to make sure the Court understands the above statement we give below the names of those eleven witnesses, and citation to the printed record filed therein, to show conclusively that they are purely negative witnesses, and their testimony of no probative value. These wtinesses are as follows:

Tommy Vaughn (R. 815-816); Herman Wilson, (R. 836); Walter Whittaker, (R. 867); Millard Harwell, (R. 873-3); John Gardner, (R. 799-803); Earl Hodge, (R. 793-4-798); Martin Murphy, (R. 764-765-771-772); Wm. Prater, (R. 262); Roosevelt Sells, (R. 721-722-732-733); Walter Lewis, (R. 701); H. A. Higginbotham, (R. 802-831).

Petitioner in its petition puts a great deal of stress on what witness H. A. Higginbotham, Sheriff, testified concerning these threats, etc. We quote from this witness's testimony as follows:

"Q. Now, if I understand you, you don't remember anything, as you told Mr. Kramer, that was said in any of the speeches? Is that right, there that day?

A. I never paid any attention to what was said.

Q. They could have said most anything and you would not have remembered it, or paid any attention to it, is that right?

A. I might have paid attention to it, but I don't remember anything now." (R. 830a-831a).

He was then asked numerous other questions that had been shown by the Mining Company, and he said that all of them could have happened and he would not know it.

That is, in substance, what all of those eleven witnesses said. Of course it is useless to cite authorities to any great extent on the proposition that the universal rule applied by all Courts is that negative testimony has little, if any, value. In a case decided by the Court

of Appeals of Tennessee, and certiorari denied by the Supreme Court, the Court said:

> "Positive testimony is where a witness sees a thing occur, that he saw or heard it, as the case may be, while negative is where the witness says, if a thing occurred I didn't see it or hear it, as the case may be."

The Court further said in that case:

> "In a case like that the positive testimony of a witness should be accepted, since there is not necessarily a conflict."
> *Atkins* v. *Smith*, 9 Tenn. App., 212.

There being only thirteen witnesses offered by petitioner, there were only two that testified to anything affirmatively that affected the findings of fact of the two Courts. The witnesses were J. W. Ridings and Howard Madewell. Witness Ridings did deny that he made the threats in his speech that he made to the employees on January 12th. Of course there were many witnesses who testified differently, that he did make the statements, and the District Court saw him and the other witnesses on the witness stand.

The other witness that might be termed to a slight extent as a positive witness was Howard Madewell, and as near as he ever came to denying anything included in the Court's findings was that he made no threats.

We therefore submit that under these conditions and circumstances there can be no successful attack made upon the facts found by the two lower Courts.

That the Court may further understand that there is no merit in the attack in the petition on the facts

found by the two Courts, we desire to mention a few of the glaring misstatements in the petition, as a reference to what the record contains will clearly demonstrate the desperate position, apparently, that the Petitioner has taken. Just a few of these glaring and outstanding errors or misstatements will be referred to.

MISSTATEMENTS IN THE PETITION

1. On page 15 of the petition the statement is made that Willard W. Clemons was paid $5,000.00 by "District 19." This same statement is also repeated on page 32 of the petition; when, as a matter of fact, the $5,000.00 that was paid to Clemons was not the money of District 19, but was the money of the petitioner herein. It was by check drawn on a Washington, D. C. bank, signed by John L. Lewis, President of U. M. W. International, and John Owens, Secretary-Treasurer of the International Union, for $5,000.00. (R. 1007a). The petition also states that District 19 was given a release by Clemons when this check was delivered to Clemons. The truth is that a release was given by Clemons, and covered some twelve or fifteen different organizations and individuals, and No. 1 in the release was the International United Mine Workers of America. (R. 1004a).

2. The statement is made in the petition in several different places that the Petitioner had over 100 of the mining operations employees who had signed cards to become members of the Union prior to January 12, 1948. (Petition, 17) Now the citation they gave in the record about this is the testimony of L. H. Bell, who did testify, on direct examination, that he thought there was 100, or more, had signed cards, but this was

after Mr. Ridings had sworn that there were over 100 members of the Local at that time.

A subpoena duces tecum was issued to the Secretary of the Local to bring the roll call, which he did, Ford Williams being his name, and the roll of the Local Union showed 45 members all told, and the names of those members are set out, and will be found in the record filed herein. (R. 452a) Only five of those 45 members of the Union were employees of the Mining Company on January 12, 1948. (R. 466a)

The list furnished by the Secretary of the Local, and the list of employees were examined and compared in open Court, and it was found that only five of the Mining Company employees were members of the Union in January, 1948. (R. 466a)

Then Mr. Bell undertook to testify that he had cards that they had signed, and in order to make it official from his viewpoint, we assume, he said that he was the custodian of these cards. (R. 566a-557a) He was then asked to name some of the men who had signed cards prior to January 12th, and said that he could not name any; and he was then handed the list of the 169 employees of the Mining Company and asked to name which ones of those had signed cards prior to January 12th, and he studied the list for some time and named three men, Walter Lewis, Hershel Bell and Earl Hodge. (R. 556a) These three names were then investigated, and it was found that Earl Hodge signed a membership card on January 13, 1948, (Appendix, 557) and Walter Lewis signed a card on January 12, 1948, while the mob had charge of the mine, and he stated that he signed the card because he was told by a bunch of Union representatives there that day that there would be

no more work in that mine until a Union was organized, and he signed it while they were there. (R. 557a). Nothing could be learned of Hershell Bell.

3. It is stated in the petition that witness Holbert, who was threatened by a representative of the petitioner, that if he sold the coal that he had in his place in Crossville that came from this mine that his place of business would be blown up. The petition then states that Holbert did sell the coal, and his place was not blown up; but what they failed to state was that he was so exercised and so scared about it that he went to the Highway Patrol of the State, and to the Sheriff of the County, and asked for aid and assistance and protection. Then he also guarded the place at night for a period of a week to ten days, while he was disposing of the coal. (R. 256a)

4. The petition states that there was absolutely no testimony in the record that supported the finding of fact that the Mining Company had over 500 truck customers on January 12, 1948, and that there was over 100 trucks there at the mine that day. Now this is an awfully bold statement, when, as a matter of fact, in answer to a cross-question propounded by Mr. Kramer, Mr. Will Turner Ray, the President of the Mining Company, stated when he was asked how many truck customers it had in December, 1947, Mr. Ray answered as follows:

> "That would be a hard question; but I will say this: we have seen days when we loaded as high as 125 trucks. I have got my truck sales book. We itemize our coal sales, and I think with time I could give you 500 names of people that handle coal from our mine."

And Mr. Ray then proposed to get the record to show, not only how many, but the names of the truck owners and the distinguished attorney representing the petitioner dropped the subject. (R. 175a)

Also, witness W. E. Morgan was asked how many truck customers the mine had at the time of the raid on the mine. His answer was:

> "Well, there were several hundred, many days we would have a hundred or more trucks, so there were several hundred different trucks that traded with us regularly."

He further stated that many times trucks stayed there as much as two or three days to get a load of coal, they could not load them fast enough to get them out, and he named a good many towns, where they came from. (R. 302a)

Again, the exact amount, as shown by the accounts of the Mining Company by dollars and cents that actually was sold to trucks during the nine days in January was $16,451.19. The average price per ton for that coal was $5.91, which made a total of 2783 tons of coal that was sold to trucks during that nine days. That was an average of 309 tons per day for the nine days, and if you figure that each truck carried three tons, that would be 103 trucks that hauled coal from there that day on January 12th, 1948. The finding of the Court was that there was more than 100 trucks that day. Now it is to be remembered that there were any number of trucks that went there for coal that did not get it. So it is conclusive that there were more than 100 trucks there that day. (R. 66a-67a)

Fearful of making this brief too long, we will not mention other misstatements of fact in the petition, but there are numerous statements which are not supported by the evidence, which only demonstrates the wisdom of accepting the findings of fact by the District Court, who saw the witnesses and their demeanor on the stand, and also because the same facts were found by the Court of Appeals.

VIOLENCE

The Mining Company does not question the Labor Union's right to use lawful means to organize unorganized workers for a lawful purpose. But it does deny such a right to substitute force, threats, violence and mob rule for fair persuasion and peaceful and lawful tactics.

Every step taken by the petitioner was unlawful. The petitioner admits in the petition that it, through its agents, induced the Mining Company's employees to quit work, but say that it was lawful, and did it by "fair persuasion." Of course the District Court who saw the witnesses, and the Court of Appeals, found right to the opposite, and really we deem it unnecessary to offer support for these two Courts' findings of fact, yet this record is so full of acts of violence and threats and overt acts carrying out conspiracy that we feel it would be well to here remind the Court by citations to certain parts of the record of evidence that so abundantly supports the findings of these two Courts in the question of violence and threats, etc. And therefore we mention some of these outstanding and clearly proven acts, threats, etc., of the petitioner.

1. There had never been any labor trouble of any kind, type or character between the management and their employees in this mine before January 12, 1948. (R. 58a)

2. J. W. Ridings had planned for this raid of 200 men, not a single one of whom was employed by this Mining Company, to be made on the mine to close the mine and to put truck drivers in fear, to take place on January 12, 1948. (R. 731a- 474a- 637a-638a)

3. Petitioner's head man in charge, Mr. J. W. Ridings, deceived Mr. Ray by the ostensibly friendly call on January 9th, and Mr. Ray so received, and invited continued friendly relations, which was promised to him by Ridings. (R. 57a)

4. The mob, led by Ridings, trespassed upon the plaintiff's property, and took possession of it, and blockaded the private road from the State Highway 1500 feet away to the mine. (R. 114a-116a-276a)

5. The mob would not permit the employees of the Mining Company to leave the mine. (R. 279a-404a) When an employee of the Mining Company, Amon Key, some referred to him as Amon Randolph, started to leave for home, three or four of the mob ran out, caught him, and forced him back to the crowd. (R. 404a-407a)

6. Five or six of the members of the mob collected around Key or Randolph, and told him, "If he worked and lived, if he and his family lived," he would have to join the Union. (R. 404a)

7. When George Stamps, an employee of the Mining Company, a County Deputy Sheriff, ordered the opening of the blockade of the road, a member of the mob,

in the presence of others, told him "There is enough fellows here that you can't make us move any cars, we could kill you before you got started." (R. 402a)

8. One of petitioner's representatives, who made a speech to the employees, said, "If they went back to work without a Union contract the mine would be blown up on them, they would be buried alive." R. 372a)

9. The same speaker also boldly told the employees that the mine was not going to be operated until they joined the Union, and if they undertook to operate it without the Union, they might find their wives and children dead in a hollow around there. (R. 372a)

10. Four of the members of the mob stopped and held up Logan Vernon, who was there with a truck getting coal, and handed him a card and told him to sign it. He said he had no business signing it, and they said, "If you work here you will sign it." And two of the four had open knives in their hands, and another had his hand in his pocket. (R. 372a-373a)

11. The violence was so vicious that day that witness Vernon Logan described it as follows: "Well, I would term that as a sort of setting on a powder keg, with everybody talking and everybody carrying guns, and everybody looking for trouble. Just a serious thing." (R. 374a)

12. The violence became so great, and so many threats were made that Logan Vernon testified that he went to the Sheriff, who was sitting in a car, and said to him, "Are you going to let these men come out here on this private property and make open threats

against these men's lives and their wives, and things, and sit here in the car and do nothing about it?" And the Sheriff answered him, "Why, I am not even armed." (R. 381a)

13. The general condition in and around the mine and town of Monterey, as result of these threats and violent conduct was to put the whole community in a tense and expectant attitude, due to what took place on the 12th and following, which the witness stated was very belligerant. (R. 281a-280a)

14. Spooner Stultz, one of petitioner's field representatives, and Howard Madewell, President of Wilder Local, led the motorcade of the mob to the mine, and was the first car to arrive at the mine, and upon alighting from their automobile they immediatley announced to Manuel Powell, Electrical Engineer of the Mining Company, that they had come to close down the mine without any election, or anything else. (R. 407a)

15. J. W. Ridings said in his speech to the employees, "Not another lump of coal would come out of that mine until a Union contract was signed by the management." (R. 330a-403a-279a-372a-83a)

16. J. W. Ridings testified that he began his speech to the employees on January 12th by telling them that he had had a meeting with Mr. Ray on the 9th, three days prior thereto, and had asked him to sign a Union contract, and he refused to do so. (R. 586a) He later admitted on cross-examination that this was a false statement, that Mr. Ray did not refuse to sign a contract, that no contract was presented to him, and that Mr. Ray said they were welcome to come back at any time to discuss the contract. (R. 629a-630a)

17. Hugh Brown, petitioner's representative, made the same threats as Riding. (R. 329a-239a-403a-229a-372a)

18. Howard Madewell, the man who arrived first, and said that they were going to close the mine, made practically the same threats to employees as Ridings did. (R. 403a-279a-272a-83a)

19. Two members of the mob, one armed with a shotgun, stopped two trucks out on the State Highway, who were about to turn into the private road to the mine for coal. This man with the gun ordered the drivers of those two trucks, after telling them that there would be no more coal from that mine until a contract was signed with the Union, to get out of there, and did this in a very threatening manner. This created such fear in these truck drivers, when they saw this big crowd and these armed men, that they turned around and went back to their employer, some fifty miles, empty and without coal and refused to return. (R. 195a-201a-191a-192a)

20. Violent threats were made against the life of W. T. Ray, President of the Mining Company, and were communicated to him. (R. 86a-564a-286a-372a and 340a)

21. Conditions were so aroused in and around the town of Monterey and the mine that the police force were placed on alert both day and night. (R. 329a)

22. Not only were the employees scared and afraid to return to work, but the whole community was aroused and was very uneasy. (R. 260a-262a-339a-406a-374a-264a-118a) The Tennessee Central Railroad Track was blown up with dynamite on the branch

leading from the main line to the mine, and employees of the Tennessee Central Railroad that served the mine were put in such fear that they refused to place cars at the mine, even after the track was repaired, and this continued from June 22nd to July 14th, the day after the Union contract was signed. (R. 407a-208a-210a-215a)

23. Five hundred truck owners refused to let their trucks return to the mine, due to the concerted action in putting their drivers in fear by threats with arms, etc. (R. 292a-175a-295a-66a-67a-302a)

24. Willard Clemons, one of the stars and hero, so to speak, of the petitioner, together with fifteen or twenty other Union members from other Locals, went out on the road leading to the mine and held up three employees when the management was trying to operate the mine, they drew two pistols on these three men, and abused them and threatened them with profane and abusive language, and applying epithets to them, and told them that there would be no more coal at that mine until a contract was signed with the Union, and told these men to tell the other employees the same thing. (R. 440a-448a)

25. Mr. John L. Lewis, President of petitioner, recognizing the effective work of Willard Clemons, and after being told by Clemons of all of the vicious plan that was made, and execution thereof, as he said, "from A to Z", paid Mr. Clemons $5,000.00, not out of the funds of District 19, but out of the funds of the petitioner. This was done by check signed by Mr. Lewis, as President, and John Owens as Secretary and Treasurer of the petitioner. (R. 603a-606a-614a-618a-1007a)

26. The petitioner, through its representative L. H. Bell, demonstrated its approval of the blowing up of the railroad track, by Bell calling on the guilty men in jail and carrying them cigarettes and fruits and other things. (R. 545a)

27. J. W. Ridings acknowledged responsibility of the dastardly trick of blowing up the railroad track by asking the management, when the Union contract was signed on July 13, 1948, that the prosecution against these two men for dynamiting the railroad be dropped. (R. 483a-515a-582a-883a)

28. Petitioner paid more than $189,000.00, as shown by the checks that passed through the Bank at Monterey, that were paid to the employees of the Mining Company who would not return to work, and, also, it is to be remembered that there never was any strike called by any organization, but was simply forced by the petitioner. (R. 107a)

29. Spooner Stultz, one of petitioner's representatives who was present on January 12, and the first one to arrive at the mine, and who either made or acquiesced in the statement by Howard Madewell that they had come to close the mine down, this same Spooner Stultz, a short while after the mine was closed on January 12th, went to Crossville, twenty-two miles from the mine, and told Clyde Holbert, who had two trucks hauling coal from the mine prior to January 12th, to his place of business in Crossville, that if he sold the coal he had in stock which came from this mine that the place would be blown up, and his trucks run off the road, and Stultz had a gun in his car when he threatened Holbert. (R. 258a)

30. Holbert was so exercised and uneasy after this threat that he went to the Sheriff of the County and to the State Highway Patrol pleading for help. In addition to that, he guarded his place of business every night for a period of about ten days. He had two trucks that were hauling coal, and the drivers refused to go back because they were scared and uneasy. (R. 256a)

31. Some of the mob were not only armed, as shown hereinbefore, but were drinking and had liquor, and drank same there on the grounds. (R. 566a-117a)

32. The City Marshal of Monterey guarded the home of W. T. Ray many nights after this raid on the mine, and put on extra policemen. (R. 340a-341a-286a)

32. The Sheriff of Putnam County appointed two deputy sheriffs to help preserve order and keep down violence. (R. 87a-827a)

33. Every move of the representatives of petitioner in this matter was unlawful, and the objective was unlawful, because they were seeking to force the execution of a Union contract that had the provisions of closed shop, which was in violation of the laws of Tennessee, and therefore in violation of the Taft-Hartley Act; they sought to force the employees to join the Union and to force the management to sign a Union contract. As the result of all of these violations and threats, the truck drivers and the railroad employees refused to go back to the mine, and therefore the truck owners and the railroad serving the mine ceased to do business with the Mining Company. (Whole testimony) (T.C.A., Sec. 50-209, and Taft-Hartley Act.)

34. To accomplish this illegal objective, the Petitioner planned to and did "induce and encourage" the employees of 500 truck owners to engage in a concerted refusal, in the course of their employment, to use, transport, or otherwise handle the product of the Mining Company, with the purpose and with the result of causing the truck owners to cease doing business with the Mining Company. (R. 122a) They also sought to and did have this same result with reference to the Railroad employees and the Railroad itself. (R. 208a-210a-215a) They also sought to do this same thing with the employees of the Tennessee Coal Company, which was producing coal for the Mining Company from this mine.

35. J. W. Ridings, the head man in this whole campaign, after he had closed the mine by force at a time which he knew was most remunerative to the owner during its whole history, actually left the State of Tennessee on January 13th, the next day after the raid, and remained out of the State for two weeks. He took this action in the face of Mr. Ray's invitation on January 9th, "You are welcome back any time," and to which, on that date, Ridings replied they would be back real soon. (R. 648a)

36. An entirely different attitude was shown by Mr. Ray. He tried his best to open the mine on the 13th of January, but failed. He remained at the mine office for nine days, contacting men, and doing other things to try to get the mine in operation, but failed; and he was contacted by no one representing the petitioner, and they made no effort to see him then, or even after that. (R. 85a-57a-282a-283a)

37. Employees of the mine refused to go back to work, and gave as their reason in every instance that they were afraid to do so, for their own safety, and for that of their families, they being aware of these threats that had been made. (R. 406a-85a-121a-152a)

38. The violence created by the representatives of the petitioner had been so great and widespread that the Governor of the State of Tennessee sent the State Commissioner of Labor, Mr. William Jacobs, and the State Mine Inspector, Mr. Welch, to Monterey, as stated by them, to both representatives of the petitioner and to the Mining Company, "to prevent a great calamity". This is the first contact of any kind or character that the representatives of petitioner, who had brought about all this great loss to the Mining Company, had shown that they had any interest whatsoever in settling this matter, and stopping this great loss, and relieve the employees of the well founded fear and tension brought about by the representatives of the petitioner.

39. Mr. Bales, President of District 19, when talking to Mr. Ridings after the mine was opened, and the management was trying to operate, was heard to say: "I will be damned if I want to sit up in Middlesboro and know that this mine is operated down here without a Union contract. I don't like that a damned bit." (R. 328a, 291a, 292a)

40. To demonstrate the general feeling of fear that prevailed in the community, the night the Railroad was blown up, a night policeman and a friend, went to the home of George Stamps, a deputy sheriff, about 11:30 to notify him of the explosion and they ran upon the porch of his home and began to shake the door, and Stamps testified, "I tried to find out who they were

and never could get any information. This night policeman was jerking the door and shaking it, and of course I was excited, too, expecting trouble, that I had learned about, and I shot through the door and killed the night policeman." (R. Vol. 1-407a)

After reading the above, can there be any wonder that the Trial Judge and the Court of Appeals found that the mine was closed and kept closed by "force, threats of bodily harm, and by acts of violence and conspiring with its employees to accomplish the same purpose, and acted wilfully, wantonly and with the intent to damage the plaintiff's business." Then, we also add, what other reasonable conclusions of law could the Trial Court or the Court of Appeals reach, except that found by the two Courts, about which the Petitioner is now complaining. It is hard to understand how our distinguished adversaries could have overlooked the threats, the violence and unlawful conduct of representatives of the petitioner with which this record is so replete.

It is also pertinent to remark here that the same insistence now being made in the petition herein concerning the matters under discussion at this time were made in the District Court and in the Court of Appeals, and both Courts held right to the opposite. It is also well to refer to the fact that a great majority of the employees of the Mining Company had been working for this Company for a good many years, and there had never been the least kind or type of labor trouble during that whole time. These employees were satisfied. Their wages that they were being paid were very slightly less than the Union scale, and they had no dues to pay. They were thoroughly satisfied, and this mob coming down upon them without a minute's notice, and

all of those threats being made, nothing could be expected except to scare them, and to cause them to continue to be scared for the safety of themselves and their families. There was no legal strike called at any time during this whole trouble; the men just quit work through fear, brought about by the conduct of the representatives of petitioner.

JURISDICTION.

The District Court's jurisdiction was specifically invoked by allegations in the complaint under four separate statutes of the United States. These statutes are: 29 U.S.C.A., 187 (Taft-Hartley Act); and 28 U.S.C.A., 1331 (Civil Actions Arising under the Constitution, Law, and Treaties of the United States); 28 U.S.C.A., 1332 (Diversity of Citizenship); and 28 U.S.C.A., 1337, (Civil Actions Arising under an Act of Congress regulating or protecting Commerce against restraints and monopoly).

Now we insist it is a well settled principle of law by the Supreme Court of the United States that if the lower Court's jurisdiction is properly asserted, because of a substantial Federal question, then its jurisdiction encompasses all grounds of recovery, both State and Federal, assuming, of course, that there is only one cause of action.

(a) The Taft-Hartley Act specifically conferred jurisdiction on the District Courts of the United States, and other Courts having jurisdiction of the parties in cases involving secondary boycotts and jurisdictional strikes. It is also clear, we insist, that the acts of representatives of the petitioner were illegal, as determined by the District Court and the Court of Appeals,

from the very beginning, that is, that petitioner's representatives, J. W. Ridings, et al., had planned and conspired among themselves, other representatives of Petitioner and with other members of different Locals to close the mine of the Mining Company by force, as they had failed to do it otherwise. Therefore, its actions were unlawful, both under the Federal statute and the laws of Tennessee, from the very beginning and all the way through. That is clearly shown by all the evidence, and judicially found by the two lower Courts. (Opinions of the two Courts)

It is also clear, we insist, that the secondary boycott was abundantly established by the proof, and this is clearly shown by the findings of facts by the Trial Judge and approved by the Court of Appeals in findings Nos. 25, 26 and 29.

However, there can be no doubt that the District Court had jurisdiction, regardless of its decision, on the merits of the case. That is, it would have to have jurisdiction in order to consider the case at all. It has been pointed out by the Supreme Court several times that the matter of jurisdiction of a lower Court to hear a case, and the decision on the merits thereof, are two entirely different things. In fact, the decision upon the merits cannot deprive the Court of Jurisdiction. On the contrary, it demonstrates that the Court had jurisdiction to hear and determine the merits of the case.

(b) Jurisdiction under 28, U.S.C.A., 1331. Jurisdiction under this Section we think is also appropriate, for this action arises under the Constitution and laws of the Unitedf States, as pointed out in the preceding paragraph.

(c) Jurisdiction under 28, U.S.C.A., 1337. This statute is appropriate, because the Taft-Hartley Act concerned itself only with commerce and industries affecting commerce.

(d) Jurisdiction under 28 U.S.C.A., 1332, Diversity of Citizenship Statute. We insist that the Court had jurisdiction under this statute because the Court found in its Findings of Fact that the petitioner exercised practically all of the powers and authority of a corporation, and others held to be judicial persons for diversity purposes. *American Federation of Musicians* vs. *Stein*, 213 Fed. (2d) 679. It is given the right to sue and to be sued, by statute, and exercises almost entirely all of the powers and duties characteristic of a corporation.

We do not insist that the Courts below decided all of these questions, but they held that the Federal Court had jurisdiction and could have been on several grounds. However, we do insist that there can be no doubt that the Court did have jurisdiction to try this lawsuit, and to settle it, and to settle it in full, and not just a portion of it. This Honorable Court has said very positively that the question of jurisdiction of a Court is not based upon the facts developed in the case so much as upon the allegations of the complaint. Jurisdictional questions are usually raised prior to the introduction of the evidence, as was done by motion in this case, and necessarily the Court must be governed by the allegations of the complaint. This question was clearly determined by the Supreme Court in the case of *Levering & Garrigues Co., et al.* v. *Morrin, et al.*, 289 U.S., 103, 77 L.Ed., 1062. In that case, Mr. Justice Sutherland, delivering the opinion, said:

> "The question of jurisdiction, as thus limited, is to be determined by the allegations of the bill,

and not by the facts as they may turn out, or by decision of the merits. *Mosher* v. *Phoenix*, 287 U.S. 29, 53 S.Ct., 67, 77 L.Ed., 148, and cases cited."

Again, Mr. Justice Sutherland said, in that case:

> "If the bill or complaint sets forth a substantial claim a case is presented within the Federal jurisdiction, howsoever, the Court upon consideration may decide as to the legal sufficiency of the facts alleged to support the same."

Certainly the allegations of the complaint make out a case under the Federal statutes, more particularly the Taft-Hartley Act, which governs the Court's jurisdiction to hear the case.

It is also clear, we insist, that the evidence as shown by the findings of fact by the two Courts clearly justify the allegations of the complaint, and show clearly that the Taft-Hartley Act was violated by the petitioner; that the conduct of the petitioner was unlawful from the beginning, and all the way through; it closed the mine by force and kept it closed, and that the secondary boycott was clearly sustained by the proof as to 500 truck owners doing business with the Mining Company; the Tennessee Central Railroad, which was transporting coal for the Mining Company, and the Tennessee Coal Company that was producing coal from the mine as best it could for the Mining Company.

While the District Court did not specifically find as a conclusion of law that the Taft-Hartley Act was violated by petitioner, neither did it find that the Act was not violated; but it did find facts that clearly showed it was violated, and for which the Mining Company was entitled to recover the damage it suffered.

The District Court, having jurisdiction of the case as above shown, found it also had jurisdiction and that it was its duty, to hear and determine the whole case. The complaint insisted upon compensatory damages under the Taft-Hartley Act (28 U.S.C.A., 187), and the common law of Tennessee, and also punitive damage under the common law of Tennessee.

Now we insist that there could only possibly be one cause of action under the evidence in this case, and under all of the findings of fact by the two Courts. There is a fundamental difference, as fixed by this Honorable Court, between the "cause of action" and the term "grounds of recovery". The single cause of action may involve one or many "grounds of recovery," and the multiplicity of the grounds of recovery do not transform a single "cause of action" into a multiple controversy. It remains single.

In one of the leading cases determined by this Honorable Court, of *Hurn, et al.*, v. *Oursler, et al.*, 289 U.S., 238, 53 S.Ct., 586, the second Headnote in that case is as follows:

> "Where two distinct grounds in support of single cause of action are alleged, and Federal ground is not plainly wanting in substance, Federal Court, even though Federal ground be not established, nevertheless has jurisdiction to dispose of the case on non-federal grounds."

The Mining Company had a right to carry on its lawful business, and the cause of action does not consist of the facts, but of the unlawful violation of a right which the facts show. It seems to us that this proposition was forever settled by this Honorable Court in the Hurn-Oursler case, supra, because in that case the

lower Court dismissed the case because of a lack of jurisdiction, and on the merits both. The Court of Appeals affirmed this decision, but the Supreme Court granted a writ of certiorari for only one reason, and that was to make clear that the dismissal of the Federal question on its merits did not prevent the Court from having jurisdiction to go on and determine the question involving the same cause of action under the State law, and the Court proceeded to hold in that case that the District Court did have jurisdiction to dispose of the case on the State law, even though the Federal question was not made out, it being only one cause of action. This same principle has been readjudicated by this Honorable Court many times since.

We refer to another case decided by the Supreme Court, *Baltimore Steamship Company* v. *Phillips*, 274 U.S., 316, 47 S.Ct., 600. In that case the matter of single cause of action with different grounds of relief are explained very fully, and it was held in that case that a suit in the Federal Court involving an accident, which resulted in a decision on the merits was res adjudicata as to the second suit involving the same matter later brought in the State Court, and based upon State law. In the opinion, the Supreme Court said:

> "The effect of a judgment or decree as res adjudicata depends upon whether the second action or suit is upon the same or different cause of action... If upon the same cause of action the judgment or decree upon the merits in the first case is an absolute bar to the subsequent action or suit between the same parties, or those in privity with them, not only in respect to every matter which was actually offered and received to sustain the demands, but also as to every ground of recovery which might have been presented."

The Court further said in that case:

"The injured respondent was bound to set forth in his first action for damages every ground of negligence which he claimed to exist, and upon which he relied, and cannot be permitted, as was attempted here, to rely upon them by piece-meal under successive actions to recover for the same wrong and injury."

"Here the Court below concluded that the cause of action set up in the second case was not the same as that alleged in the first, because the grounds of negligence pleaded were distinct and different in character, the ground alleged in the first case being the use of defective appliances, and in the second, the negligent operation of the appliances, by the officers and boat employees. Upon principle, it is perfectly plain that the respondent suffered but one actionable wrong, and was entitled to but one recovery, whether his injury was due to one or the other of several distinct acts of alleged negligence, or to combination of some or all of them. In either view, there would be but one single wrongful invasion of a single primary right of the plaintiff, viz., the right of bodily safety, whether the acts constituting such invasion were one or many, simple or complex.

"The cause of action does not consist of facts, but of the unlawful violation of a right which the facts show . . . The injured respondent was bound to set forth in his first action for damages every ground of negligence which he claimed to exist, and upon which he relied, and cannot be permitted, as was attempted here, to rely upon them by piece-meal in several actions to recover for the same wrong and injury."

The laws of Tennessee will not permit a cause of action to be split:

Fire Ins. Co. vs. *Cleveland*, 162 Tenn., 88;
Sadler vs. *Apple*, 28 Tenn., 342;
Railroad vs. *Matthews*, 115 Tenn., 172 and many other cases.

In the case at bar one right only is involved, viz., the right to conduct a lawful business, free from unlawful interference. In the Baltimore Steamship case it was the right to remain free of personal injury. In the Oursler case it was the literary property right of an author. In the present case it was the right of the Mining Company to carry on a lawful business.

The Sixth Circuit reaffirmed this rule in the case of the *American Fidelity & Guaranty Co.* v. *Owensboro Milling*, 222 Fed. (2d) 109, (6th Circuit, 1955). There are also other cases decided by this Honorable Court declaring the same rule. We cite the case of *Benderup* v. *Putty Exchange*, 263 U.S., 291, 44 S. Ct., 96. In that case, this Court said:

"Jurisdiction is the power to decide a justiciable controversy, and includes questions of law, as well as of fact. A complaint setting forth a substantial claim under Federal Statutes presents a case, within the jurisdiction of a Court, as a Federal Court. But this jurisdiction cannot be made to stand or fall upon the way a Court may chance to decide an issue, as to the legal sufficiency of the facts alleged, not more than upon the way it may be decided as to the legal sufficiency of the facts proven. The decision, either way, upon either question, is predicated upon the acceptance of jurisdiction, not upon the absence of it. Jurisdiction, as distinguished from merit, is wanting

only where the claim set forth in the complaint is so insubstantial as to be frivolous, or, in other words, is plainly without color of merit."

See, also, *Bell* v. *Ohio*, 327 U.S., 678, 66 S. Ct. 773.

On the question of single and multiple causes of action, we cite the cases of:

American Fire & Casualty Co. v. *Finn*, 341 U.S. 6, 71 S. Ct., 534;

Sullman Co. v. *Jenkins*, 305 U.S., 534, 59 S. Ct., 347.

ONLY A SINGLE CAUSE OF ACTION EXISTS IN THIS CASE

The complaint alleged a violation of a single right, the right to conduct a lawful business, free from unlawful interference, and it is the violation of this right which constitutes the cause of action. The claim of a secondary boycott provided for in the Taft-Hartley Act, the common law conspiracy, as determined by the Courts of Tennessee, are clearly supported, and violations of both fully demonstrated, by the facts as they developed in this case.

Secondary boycott has conspiracy inherently in its nature. It is necessary for more than one person to engage in the proscribed conduct in order for the secondary boycott to come into existence. This, in legal terms, under the laws of Tennessee is an unlawful conspiracy. We assert that there was one conspiracy aimed at accomplishing an unlawful purpose, to force the closing of the mine through violence and threats, and to damage plaintiff's business, thus forcing the

Meadow Creek Coal Company to sign a contract with the Union, and to force the employees to become members of the Union. Also to force the management to sign a contract that was unlawful under the laws of the State of Tennessee, and therefore unlawful under the Taft-Hartley Act, (Tenn. Code, Ann., Sec. 50-209), and in the operations to accomplish this unlawful purpose, the petitioner violated the right of the Plaintiff to conduct a lawful business. The grounds of recovery are different, perhaps, but that presents no obstacle, because the Baltimore Steamship case and others hereinbefore cited clearly demonstrate that different grounds of recovery in no way affects the singleness of a cause of action. The District Court had jurisdiction of the Federal question, it being indeed a very substantial one, and under the relevant authorities the Court's jurisdiction extends to every other ground of relief that could be asserted under this cause of action. A failure to assert any grounds of relief, other than the violation of the Taft-Hartley Act, would preclude such assertion at any later time, or in any other form.

There certainly is nothing new for this Honorable Court to determine in this cause on these matters, that has not been fully determined heretofore.

UNLAWFUL CONSPIRACY

The findings of fact of the two lower Courts, abundantly supported by the proof, show the formation of an unlawful conspiracy by the petitioner, its officers, agents, representatives, members, etc., aimed at the plaintiff in this case, the commission of overt acts in furtherance thereof, and substantial damage resulting to the plaintiff's business. (Findings of Fact).

There can be no doubt that the facts in this case, as determined by the two Courts, show an accountable conspiracy under the laws of Tennessee.

In the case of *Brumley* v. *Chattanooga Speedway*, 138 Tenn., 534, the Supreme Court of Tennessee said:

> "A civil actionable conspiracy in Tennessee is a combination between two or more persons to accomplish by concert an unlawful purpose, or to accomplish a lawful purpose by unlawful means."

In support of the above statement we also cite *Hutton* v. *Waters*, 41 Tenn., Court of Civil Appeals, 582.

Of course a conspiracy to accomplish an unlawful purpose by an unlawful means is actionable conspiracy. *Duplex Printing Press Co.* v. *Deering*, 354 U.S., 443, 41 S.Ct., 172.

In the case at bar the findings of fact by the two Courts disclose that the petitioner conspired with and among its officers, agents, etc., and others, to injure or destroy the business of the Mining Company, and among the purposes of the conspiracy was to compel plaintiff to execute a collective bargaining contract, unlawful both under the laws of the State of Tennessee, and the Federal law. (Tennessee Anti-Closed Shop law, T.C.A. 50-208, et seq.) This statute was passed upon by the Supreme Court of Tennessee, and the Act held constitutional, and being the policy of the State, all contracts made with that provision are illegal and absolutely void. *Mascari* v. *International Brotherhood of Teamsters, etc.*, 187 Tenn., 345, 215 S.W. (2d), 779.

It is also a well established principle of law that all persons who participate in an unlawful act, or in furtherance of a conspiracy, are equally liable as co-conspirators. *Calcutt* v. *Gearing*, 271 Fed., 220.

SUBSTANTIAL FEDERAL QUESTION INVOLVED

As stated earlier in this brief, the facts as found by the two Courts clearly show, that it was a conspiracy under the laws of Tennessee; that the secondary boycott prohibited by the Taft-Hartley Act was involved, a wide area geographically, with a great many people, both members of the U.M.W., and non-members. There was more than one type of secondary boycott shown in this case. We do not deem it necessary to go into details, as we have already demonstrated hereinbefore very clearly that secondary boycotts, brought about by various acts of violence and force, and by persuasion and threats, the petitioner induced and encouraged the employees of the Tennessee Central Railroad Co. to engage in a concerted refusal to transport or otherwise handle any goods, articles, or materials or commodities, or to perform any services for the Mining Company; the result thereof was to force the Tennessee Central Railroad Company to cease handling or transporting the products of the Mining Company, and to cease doing business with it.

We quote here the exact language of the Taft-Hartley Act, 29 U.S.C.A., 187, which reads as follows:

> "(a) It shall be unlawful for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees

of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities, or to perform any service, where an object thereof is:

"(1) Forcing or requiring any employer or self employed person to join any labor or employer organization, or any employer or other persons to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer or processor or manufacturer, or to cease doing business with any other person."

(U.S.C.A., 187a (1)

Sub-Section (B), under the same section of the Act as above cited, gives a right to bring suit in the U. S. District Court to collect any damage a person may suffer to his business or property by violation of the statute above set out.

The findings of fact by the two lower Courts clearly show that the petitioner, by violence, dynamiting property, threats, and other violent conduct, induced and encouraged the employees of the Tennessee Central Railroad concertedly to engage in a secondary boycott, and that the railroad, therefore, was compelled, or at least did refuse to deliver cars to transport the product of the mine, and quit doing business with the Mining Company. This also applied to 500 truck owners. All of these activities come within the proscription set out in Sec. 29, U.S.C.A., 187. And this Honorable Court has held that the employees of the Railroad Company are not excluded from this portion of the Taft-Hartley Act.

In support of this proposition we cite:

International Brotherhood of Electric Workers v. *N.L.R.B.*, 341 U.S. 694, 71 S.Ct., 954; *International Rice Milling Co.* v. *N.L.R.B.*, 183 Federal (2d), 21, (Fifth Circuit.)

Also, in the case decided by this Court, *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, et al.*, v. *New York, New Haven & Hartford R.R. Co.*, 350 U.S., 155, 76 S.Ct., 227. This case is popularly referred to as the "Piggy Back" case, and in that case Mr. Justice Minton said:

> "We think it clear that Congress, in excluding any person subject to the Railway Labor Act from the statutory definition of employer, carved out of the Labor, Management, Relations Act the Railroads' Employer-Employee relationship, which were and are, governed by the Railway Labor Act, but we do not think by so doing Congress intended to divest the N.L.R.B. of jurisdiction over controversies.
>
> "Furthermore, since Railroads are not excluded from the Act's definition of "person", they are entitled to Board protection from the kind of unfair labor practice proscribed by Sec. 8 (b) (4) (4)".

It therefore follows that there was clearly a secondary boycott shown with reference to the employees and the operator of the Tennessee Central Railway, as well, as to the truck owners.

TRUCK BOYCOTT

We do not deem it necessary to go into the facts as found by the two Courts, but they do clearly show that the secondary boycott was proven by the evidence, and that some 500 trucks belonging to people that were doing business with the Mining Company on Jan. 12th, when the mob raided the mine, and that these truck drivers were put in such bodily fear that they refused to return for coal, even after the mine was opened, and undertaken to be operated on April 14. That therefore the owners of the trucks ceased to do business or to transport any of the product of the Mining Company. This specific item was covered by the finding of fact No. 25 and other findings of fact. (R. 37a)

Petitioner puts great stress on the case of *National Labor Relations Board* v. *The International Rice Milling Co.*, 71 S. Ct., 961. There is very little similarity in that case to the one at bar. In that case there was only one truck involved, and it was on the grounds where the strike was in effect. In the case at Bar there were 500 trucks, and all of which were affected to such an extent by the violence and threats of the petitioner, through its agents, that the drivers refused to go back and get any more coal.

This Court, in the case of *N.L.R.B.* v. *Denver Building & Construction Trades Council, et a.*, 71 S. Ct.; 943, held:

> "It is not necessary to find that the sole subject of the strike was that of forcing a contractor to terminate sub-contractor's contract."

This is emphasized by the legislative history of this Section, as stated in the Denver case, in which Senator

Taft, the sponsor of the Act, is quoted: "Sec. 8 (d) (4), relating to illegal strikes and boycotts, was amended in conference by striking out the words 'for the purpose of', and inserting the clause, 'where an object thereof is'. (98 Congressional Record, 68-69)."

There can be no doubt that this petitioner acted unlawfully right from the beginning. However, the Supreme Court said, in the Denver case just hereinbefore cited, that a secondary boycott can be influenced and brought about, and therefore a violation of the Taft-Hartley Act, as the effects of a primary strike, even though it is lawful.

In that case the Supreme Court said:

> "Petitioners contend that Sec. 8(c) immunizes peaceful picketing, even though the picketing induces a secondary boycott made unlawful by Sec. 8(b)(4). The Board reached the opposite conclusion, and the Court below approved the Board's order as applied to the facts of this case, which is recognized as amounting to 'bare instigation' of a secondary boycott. We agree with the Board."

The words "induce" or "encourage" are broad enough to carry in them every form of influence and persuasion. There is no legislative history to justify an interpretation that Congress by these terms has limited its proscription of secondary picketing to cases where the means of encroachment amount to either reprisal or force, or promise of benefit. But in the case at bar, this principle is not involved due to the violence and unlawful acts of the petitioner.

These same facts and applicable law apply to the employees of the Tennessee Coal Company, which was

trying to operate the mine from April 14th to July 13th, and to produce coal for the Mining Company herein.

TENNESSEE COMMON LAW AS TO CONSPIRACY

It is unlawful in Tennessee to conspire to injure the lawful business of another. An unlawful conspiracy is defined by the Supreme Court of Tennessee in the following language:

> "A civil conspiracy may be defined to be combination between two or more persons to accomplish by concert of action an unlawful purpose, or to accomplish a purpose not in itself unlawful, by unlawful means, the damage caused being the gist of any action."
>
> *McKee* v. *Hughes*, 133 Tenn., 459.

There is also a case in Tennessee, and reported by the Court of Civil Appeals, where certiorari was denied by the Supreme Court, being that of *Donnelly* v. *Jackson Bros.*, 2 Tenn. Civil Appeals (Higgins), 408. In that case, the Court sustained judgment of damages to persons whose business had been damaged by a conspiracy, and also the Court gave punitive damage in that case.

There is also a case that may be regarded as one of the strongest and leading cases of the State of Tennessee, viz., *Brumley* v. *Speedway Motordrome Co.*, 138 Tenn., 534. In this case the Court approved the case of *McKee* v. *Hughes* above cited, and also held that all of the co-conspirators were severally and jointly liable for the whole damage sustained. The Court also held in that case:

"A corporation may be liable for conspiracy to defraud, even though the transaction by means of which the fraud was accomplished was outside the scope of its corporate powers."

Any number of cases in Tennessee sustain this proposition. However, we do cite one other case, which is a Federal case, *State Tire & Oil Co.* v. *Shell Petroleum Co.*, 126 Fed. (2d), 971.

In this connection we desire to mention the case decided by the Supreme Court of the United States, which is controlling in the case at bar, it being the case of *United Construction Workers* v. *Laburnum Construction Co.*, 347 U.S., 656, 74 C.Ct., 833. In that case the Court determined definitely that the Labor-Management Relations Act did not preempt the field of Labor Relaitons, so as to exclude a common law tort action for damages. The Court went on further and said that these rights could be asserted in a State Court, and of course under other sections of the U. S. Code the Federal Court has jurisdiction also. Certainly the common law rights in a suit may be asserted in a Federal Court, and the Supreme Court said in the Laburnum case, last above cited, as follows:

"The 1947 Act has increased, rather than decreased, the legal responsibility of labor organizations. Certainly that Act did not expressly relieve Labor organizations from responsibility for unlawful conduct. It sought primarily to empower the Federal regulatory body, through administrative procedure, to forestall all unfair labor practices, by anyone in circumstances affecting interstate commerce. The fact that it proscribed in that preventive procedure against unfair labor practices on the part of Labor organizations was an additional recognition of Congressional dis-

approval of such practices.. Such an express recognition is consistent with an increased insistence upon the liability of such organizations for tortious conduct, and inconsistent with their immunization from liabilities for damages caused by their tortious practices."

The facts in the Laburnum case above cited are very similar to the facts in the present case, except of course the damage was nothing like so great, and the conduct was not near so reprehensible. The facts in the case at Bar clearly demonstrate a right of action under the common law of the State of Tennessee. That there was a conspiracy on the part of petitioner to damage the business of the Mining Company there can be no doubt. The action of the Petitioner was illegal from the beginning, and every act thereafter, whether in violation of the Taft-Hartley Act or the Common Law of Tennessee, was simply another overt act in the furtherance of the conspiracy formed in the beginning, and followed by many acts of violence in the furtherance of the purposes of the conspiracy, viz., to damage plaintiff's business, and everything that was done in the furtherance of this conspiracy all added up to one cause of action, viz., damage to its business. The assembling of the 200 men, the deceitful visit of Ridings and Brown to the home of Mr. Ray, the violent threats that were made and violent acts indulged in that forced the closing of the mine, and the continuing of its closing; threats to truck drivers that brought about the secondary boycott by the truck owners declining and refusing to do business with the Mining Company; the blowing up of the railroad track, and other acts and threats that brought the railroad employees in fear, and as result the refusal of the railroad to do business with the Mining Company; the payment of the $5,000.00 by Mr. Lewis, President of petitioner, out of

its funds, in violation of its own constitution, and by other acts of this kind and nature, as shown by this record, and as found by the two lower courts, were nothing more nor less than overt acts in furtherance of the conspiracy to damage the Mining Company's business, and at the same time the same conduct and actions of the petitioner, through its representatives, was also a clear violation of the Taft-Hartley Act. But all of this constitute one cause of action, viz., damage to the Mining Company's business, for which, under the Taft-Hartley Act and the common law of Tennessee, it is entitled to be compensated in the amount of damage it suffered, and under the Tennessee law entitled, also, to punitive damage. The rights of the Mining Company could be no less in the Federal Court in this instance than in the State Court.

We therefore insist that there is nothing new in this case that the Supreme Court has not already determined, and therefore no merit in the petition for certiorari.

AGENCY

The Taft-Hartley Act provides:

> "For the purpose of this Section, in determining whether any person is acting as 'agent' of another person, so as to make such other person responsible for his action, the question of whether those specific acts performed were actually authorized or subsequently ratified, shall not be controlling." (U.S.C.A., 185(e)

Also said Act provides, as shown in 29 U.S.C.A., Sec. 185 (b), as follows:

> "Any labor organization which represents the employee in an industry affecting commerce, as defined in this chapter, shall be bound by the acts of its agents."

We will not quote extensively from the case of *United Mine Workers* v. *Patton*, 211 Fed. (2d), 742, because we are certain that the Court is familiar with this case. Judge Parker said in that opinion:

> "The history of the Act shows clearly that the intent of Congress was to apply to suits of this character the common law rule with respect to liability for acts of an agent."

An unincorporated association may be sued as an entity in Tennessee, (Tenn. Code, Ann., Sec. 20-223), and any judgment obtained may be satisfied out of any property belonging to the Association. Substituted service of process on such association is constitutional.

McDaniel v. *Textile Workers Union*, 254 S.W. (2d)

Now under the concurrent findings of fact of the two lower Courts, there can be no doubt, we insist, that the Taft-Hartley Act was violated. Both Courts found that the petitioner is clearly shown to have been directly responsible for the conduct which brought about the wrongful closing of plaintiff's Mine, and wrongful interference with its business to such an extent as to make the defendants liable therefor. This is stated in the findings of fact by both Courts, and in the conclusion of law, it is re-stated by the District Court.

In finding of fact No. 41 the lower Court said:

> "On the whole record and in the light of the entire evidence, the Court finds that the unlawful conduct of the defendant in closing plaintiff's mine

by force of a large mob, by threats, by acts of violence, and other wrongful means, directly caused the plaintiff to suffer damages in its business in the year 1948, principally for the first half of that year."

(R. 41a-42a)

The petitioner is in no position to deny the agency of J. W. Ridings, and others, because it admits them as such in its answer to the complaint in this case. By referring to the complaint, it will be seen that in Sec. VI thereof it is charged "That two representatives of the United Mine Workers of America called on the President of plaintiff's company at his home in Monterey, and informed him that the defendant was attempting to interest the employees of the plaintiff in joining the United Mine Workers of America, etc." Now in petitioner's answer to that allegation, and in Section V of the answer, the following language is used: (R. 8a) (R. 18a)

"For answer to Paragraph VI, the defendant admits that an informal meeting was had between the President of the plaintiff Company and representatives of the defendant. At this meeting, the matter of representation was discussed, but no agreements were made or proposed with respect thereof." (R. 18a)

Also in that answer it shows that the petitioner, that is, the International, knew what took place in that conference, because in the next sentence in its answer, in the same section, this language is used:

"The defendant believed at that time, and its representatives asserted during that meeting that the defendant represented a majority of the employees of the plaintiff." (R. 18a-19a)

This conference, which the petitioner admits that it was thoroughly acquainted with, took place three days prior to the mob's raid on the mine, and was preparing for said mob meeting. The only possible purpose of the January 9th meeting on the part of Petitioner was to deceive the management, so that there would be no effort to prevent it.

Again, in the answer, and in Paragraph VII thereof, this language is used:

> "It admits that certain employees of the plaintiff were addressed by representatives and members of the United Mine Workers of America, who attempted to persuade said employees not to return to work until said organization was recognized by the plaintiff as the collective bargaining agent of the employees." (R. 19a)

This statement in the answer clearly shows that the International Union knew what took place, and the answer itself amounts to a clear approval of what did take place there on that day. Therefore, we can see no reason on earth why the petitioner will now be allowed to deny its authorized agents acting for it. Of course there are many other matters that appear in the evidence in the record which conclusively show, and as found by the District Judge, and approved by the Court of Appeals, that the petitioner did all these things itself, through its authorized agents, including the planning and the execution of the conspiracy to damage the Mining Company's business. Certainly they cannot complain now with any degree of consistency, it seems to us, that would make any favorable impression upon this Honorable Court.

In this connection, it is well enough to give some attention to the allegations of the petition, and those

things in support of it therein concerning the application of the Clayton Act and the Norris-LaGuardia Act, especially the latter. Neither of these acts, we insist, could have any application whatsoever.

They rely, for this position on this question, upon the case of the *United Brotherhood of Carpenters and Joiners v. U. S.*, 330, U. S., 395, 401. This same case was cited in support of the proposition in the District Court and the Court of Appeals, but when that case is read, it will clearly appear that it is not only not any authority to support the position of the petitioner, but clearly supports the position of the Mining Company.

In the first place, it will be remembered that the case referred to is a criminal case, and the Court did not find in that case that the Norris-LaGuardia Act was not complied with, but only reversed the case because the Trial Judge failed to charge the jury the provisions of that statute, and the Supreme Court was careful to state in its opinion that that was the reason that it was reversed. Also the Court in that case took a great deal of caution to explain its position concerning the Act, so that there would not be any misconstruction of it as that attempted in this case at Bar.

In that case the Court said:

> "The suggestion is made that the large and powerful Unions and corporations gained the greatest degree of immunity in our interpretation of Sec. VI. That is not the case."

Then, exercising more caution that the construction of Sec. VI of the Norris-LaGuardia Act would not be misunderstood, the Court said, in that case:

"There is no implication in what we have said that an association or organization in circumstances covered by Sec. VI must give explicit authority to its officers or agents to violate in a labor controversy the Sherman Act, or any other law, or to give instant approval of any act that its officers may do. Certainly an association or organization cannot escape responsibility by disavowing authority on the part of its officers to make any agreements in violation of the Sherman Act, and disclaiming Union responsibility for such agreements; facile arrangements do not create immunity from the Act, whether made by employee or employer groups."

And the Court further proceeded to clinch the matter:

"The conditions of liability under Sec. VI are the same in the case of each. The grant of authority to an officer of a Union to negotiate agreements with employers with regard to hours, wages and working conditions, may well be sufficient to make the Union liable. An illustration of unrestricted example might be where there was knowing participation by the Union in the operation of the illegal contract after its execution. And the custom or authoritative practice of a particular Union can also be a source of actual authorization of an officer to act for and bind a Union."

United Brotherhood of Carpenters case, Supra.

We insist, of course, that the Norris-LaGuardia Act, Sec. VI, or any other part of it, or any portion of the Clayton Act, has no application whatever to this case. However, the Mining Company is in the most advantageous position that it could possibly be, because even if, for any reason, by imagination or otherwise, it should be thought that the Norris-LaGuardia Act does have application, then its requirements, as construed by

this Honorable Court in the *United Brotherhood of Carpenters case*, have been complied with more than 100%. It cannot be disputed that, on the trial of this case, evidence was presented to the Trial Judge, sitting as a Jury, with reference to the very thing mentioned by the Supreme Court in the above opinion, and numerous other things bearing on the same subject, and that the Court, sitting as a jury, expressly found that the petitioner herein did authorize or approve, or both, the acts of their agents and the representatives that were responsible for this damage to the Mining Company's business.

Numerous matters were covered by the evidence, in addition to those things mentioned, that would be sufficient, in the Brotherhood case. The District Court found, from all of this evidence, some of which was: That J. W. Ridings and Harry Brown and L. H. Bell were representatives of the petitioner, as stated in its brief at another part, and admitted also in the answer, not only that these men were the agents and representatives of the petitioner, but the petitioner knew what they were doing, because the answer expressly says so.

The Trial Court found, in Findings of Fact Nos. 6, 11, 21, 22, 25, 29, 26, 34, 36, and 41, that the petitioner, through its representatives, was the guilty party for bringing about this damage to the Mining Company, and therefore that these men were its agents, and the petitioner was bound by their acts. These findings were all approved by the Court of Appeals, and there is an abundance of evidence in the record to support each and every one of the findings.

The Supreme Court also used this significant language in the United Brotherhood of Carpenters case:

"The grant of authority to an officer of a Union to negotiate agreements with employers regarding hours and wages and working conditions may be sufficient to make the Union liable."

Mr. Ridings stated several times in his testimony that he was given authority to negotiate agreements with the Mining Company, or any other employer in that area in which there was to be considered the hours of work, wages, working conditions, etc. Also Mr. Ridings did actually negotiate the contract for the petitioner.

The Supreme Court also in that case states that a participation in the contract made by parties as agents of the International Union would be sufficient under the Norris-LaGuardia Act. Of course it appears in this record without any doubt, and is found by the two Courts, that the contract was finally executed between the petitioner and the Mining Company, and that contract execution was handled by J. W. Ridings, the contract sent to Washington to the chief office, and was accepted, and dues collected by the Mining Company and remitted to Washington to the Union, and that it kept $2.25 of the dues, and sent the other $2.00 to District 19 and the different Locals, and has collected from 20 to 40 cents on every ton of coal mined since the contract was executed under the welfare clause.

This was an illegal contract, under the laws of Tennessee, and the Taft-Hartley Act, as hereinbefore shown. That insistence alone, according to the Supreme Court in the Brotherhood of Carpenters case, would be sufficient as a source of authority for these men to act for the petitioner in all of the unlawful doings before the contract was executed.

There are any number of other circumstances in the record that was submitted to the Trial Judge, like the payment, according to the findings of the two lower Courts, or more than $70,000.00 to keep the men from going back to work. Another very significant circumstance was the payment of $5,000.00 out of the funds of the petitioner by its President, to Willard Clemons, and said payment was made after Mr. Clemons had written Mr. Lewis a letter telling him all that had taken place from the beginning to the end, as the witness said, "from a to z", and therefore Mr. Lewis was informed by that letter fully of these things. However, it is clear that it was nothing new to Mr. Lewis at that time, for he evidently knew all about it.

The Supreme Court also said in the Carpenter case that the general characteristics and reputation of the organization involved in carrying on a campaign of this kind was another circumstance, and that was shown in this record.

Therefore, we earnestly insist that neither the Clayton Act nor the Norris-LaGuardia Act had any application whatsoever to this case; secondly, even if, perchance, for any reason, imaginary or otherwise, it could be thought by any one that the provisions of the Norris-LaGuardia Act could apply, then the very case relied upon by petitioner is clear, positive authority, by this Honorable Court, that the provisions of that Act have been complied with in this case, because the facts and circumstances, many of them developed in this case, clearly show that the facts were presented to the Trial Judge, sitting as a jury, and a finding of fact thereon as result of the testimony was that these men represented the petitioner in their acts and conduct, and the petitioner is liable for their acts.

The petitioner sets out eight questions to be presented in its petition.

PETITIONER'S QUESTION NO. 1

The substance of this question is, did the District Court, having failed to find, as a conclusion of law, that the Taft-Hartley Act had been violated, have the jurisdiction to determine the common law, or non-federal cause of action?

Of course we answer this question in the affirmative, as did the two Courts below, and we think that we have completely answered this question in this brief, beginning at page 35. Not only did the complaint as amended allege a clear violation of the Taft-Hartley Act, and in adequate detail, allege a secondary boycott, as covered by the Taft-Hartley Act, with reference to 500 truck owners thereof, and the Tennessee Central Railroad, both of which quit doing business with the Mining Company, to its great damage, by reason of the conduct of the petitioner, and to a certain extent as it applied, also, to the employees of the Tennessee Coal Co., which was acting for the Mining Company, and the proof does conclusively show, as found by the District Judge and the Court of Appeals, to clearly show that the Taft-Hartley Act was violated. We think any further comment on this question is unnecessary.

PETITIONER'S QUESTION NO. 2

The substance of this question is the insistence on the part of the petitioner that Sec. VI of the Norris-LaGuardia Act (29 U.S.C.A., 106), applies to this case. We have answered this question in this brief beginning at page 54. We think by the United Broth-

erhood of Carpenters case, the Supreme Court itself has already answered this question very clearly, even if in any manner whatsoever it could ever for any reason whatsoever, be determined that the Norris-LaGuardia Act has any application whatsoever to this case, of course we insist that it does not, and could not, but even if it does it has been abundantly complied with, as decided by this Honorable Court in the Brotherhood of Carpenters case.

PETITIONER'S QUESTION NO. 3

We will treat this question later in this brief, because we have not considered it hereinbefore; and our consideration begins in this brief on page 80.

PETITIONER'S QUESTION NO. 4

This question will be considered later in this brief, and begins on page 89.

PETITIONER'S QUESTION NO. 5

We have treated this question heretofore in this brief, which will be found to begin on page 44. Of course under the findings of fact by the District Court and by the Court of Appeals, the conduct of the petitioner is abundantly sufficient to support a common law right of action under the laws of the State of Tennessee, and we have also referred in this brief to many different acts of violence and threats of violence and unlawful conduct that clearly support a right of action under the laws of Tennessee. This consideration begins in this brief at page 25.

PETITIONER'S QUESTIONS 6 AND 7

These questions can properly be considered together, because they are individual incidents that were considered in the case. The two Courts did not base their conclusions of law, or their findings of fact, upon any one individual act or conduct, but upon all of them together. The District Court, and the Court of Appeals, from all of the circumstances in the case, and shown in the evidence, that the defendant, through its representatives, was responsible for the dynamiting of the railroad track, and there is much evidence in the record to sustain this finding, and is the same as a verdict of a jury, and is therefore binding. The question is asked whether or not the petitioner is responsible for the acts of one of the members, Willard Clemons, in his conduct in taking the fifteen or twenty men out and holding up three employees of the Mining Company, drew guns on them, and abused them, etc. This is another instance where much proof was offered before the Court on this proposition, and certainly Mr. Lewis knew about it, because he was informed, and paid $5,000.00 of petitioner's money to this man, when there could have been absolutely no legal liability. Yet Mr. Lewis recognized him as a representative of the Union, because he paid him, to get a release, or to keep him from talking, or some other reason. This is just another incident that was submitted to the Trial Judge, sitting as a jury, and his finding has at least equal weight as findings of a jury.

Therefore, we insist, first, that the evidence clearly justifies the finding; second, that there is a concurrent finding of the two Courts as to the facts, and is therefore conclusive.

Petitioner, also, in Question 7, seeks an answer as to whether or not the petitioner could be held liable as a consequence of furnishing to the employees on strike groceries and other articles.

Now, in the first place, this was no determining matter with reference to the Court's finding, nor of the conclusion of law. The Court simply found the facts concerning this matter, viz., that the petitioner did furnish to these men more than $70,000.00 and it was done for the purpose of keeping them from going back to work. This was just another circumstance that entered into the findings of fact by both Courts. However, it is to be remembered that there was never a legal strike called by that Local, but they simply went out and refused to go back to work because of the threats and violence on the part of petitioner's representatives, and in fear of their own lives, and that of their families, and also this should be remembered, that nothing was done by this petitioner concerning this matter that was legal. It was all unlawful from the beginning. However, whatever the two Courts found with reference to this item it was submitted in the evidence to the Trial Judge, sitting as a jury, and has much evidence to support it, and was approved by the Court of Appeals, and therefore we insist is conclusive.

PETITIONER'S QUESTION NO. 8

This question No. 8 insists that a different statute of limitation of Tennessee applies to this case to that applied both by the District Court and the Court of Appeals.

The Taft-Hartley Act contains no limitation of action, and there is no applicable Federal statute of limitation contained in any other Act of the Congress. It is therefore necessary to look to the Tennessee law to supply the controlling statute of limitations. The petitioner insists that a three-year statute, as provided in Tenn. Code, Ann., Sec. 28-305, is controlling, while the Mining Company insisted before the District Court and the Court of Appeals that the ten-year statute of Tennessee, as provided in Tenn. Code, Ann., Sec. 28-310, applies.

Tenn. Code, Ann., Sec. 28-305, reads as follows:

> "*Actions for injuries to personal or real property, actions for the detention or conversion of personal property* . . . (not pertinent to this case) shall be commenced within three (3) years from the accruing of the cause of action."

Tenn. Code, Ann., Sec. 28-310, reads as follows:

> "Actions against guardians, executors, administrators, sheriffs, clerks and other public officers on their bonds, action on judgments and decrees of Courts of record of this or any other state or government, and all other cases not expressly provided for, shall be commenced within ten (10) years after the cause of action accrues."

We insist, that this matter can be no reason whatsoever, for the granting of the writ asked for in the petition herein, because it has been determined both by the Sixth Circuit Court of Appeals and the Supreme Court of the United States, where the case later cited was taken, and in the very able opinion delivered by Mr. Justice Holmes the Court of Appeals was affirmed.

HISTORY OF CODE SECTIONS

The two Sections of the Tennessee Code above quoted came into the Codified law of the State of Tennessee in the Code of 1858, by legislative enactment.

The above quoted Sections of the Code have never been changed, and remain intact today, that is, so far as the language that is applicable to this case is concerned. That is, the language of the Code involved now in this case remains word for word exactly the same as it was when it was first enacted by the Legislature of Tennessee one hundred years ago. This question of which statute applies to the present case we think is foreclosed, so far as its application to this case is concerned.

The case of *Chattanooga Foundry & Pipe Works* v. *City of Atlanta*, 127 Fed., 23, 203 U.S., 390, was brought in the U. S. District Court at Chattanooga, Tenn. It was a case brought for damage to the business of the plaintiff under the Sherman Anti-Trust Act, and really was a conspiracy case. It was based upon the allegation that the Anti-Trust laws had been violated by reason of the unlawful combination or conspiracy of pipe manufacturers to sell pipe, at an inflated price, to the City of Atlanta. The suit was brought more than three years after the cause of action accrued, and the three-year statute hereinbefore quoted was pleaded by the defendant. The District Judge held that the three-year statute of limitations applied, because, he said, it was a suit for damage to property. The case was appealed to the Circuit Court of Appeals, 6th Circuit, and was reversed, the opinion being delivered by Judge Horace H. Lurton, who was a member of that Court from Nashville, Tennessee, and who had not only been one of the great lawyers

of the State, but went directly from the Supreme Court of Tennessee to the U. S. Court of Appeals of the 6th Circuit. Judge Lurton held in that case that the ten year statute applied, and not the three year. After stating the contention of the defendant and the decision of the District Court, Judge Lurton said:

> "To this we cannot assent. That section (three-year statute) applied only to causes of action arising out of some injury to property, as distinguished from its detention or conversion. Property, either personal or real, may be injured or damaged without its being either detained or converted, but whether the cause of action be an injury or damage to the property, or for its taking or detention, the suit must be brought within the same period. This distinction between the two kinds of injury to tangible personal property is of very ancient origin . . . (citing Sir Wm. Blackstone, Vol. 3, 145, 153)."

In this chapter entitled, "Injuries to Personal Property," Judge Lurton continued:

> "We find in the very carefully selected verbiage of Section 4470 a recognition of the two kinds of injury to which tangible property is susceptible—one, by a damage which does not affect the possession, and the other by a taking or detention, which does.
>
> "While the precise question has not been decided by the Supreme Court of Tennessee, we do find an indisposition to give to the section any such broad and indeterminate meaning as would include a suit which does not involve any actual injury to property. Thus this section was held not to apply to a suit against an attorney for the negligent loss of a debt entrusted to him for collection. *Bruce* v. *Baxter*, 7 Lea, 477; *Ramsey* v. *Temple*, 3 Lea, 253. Nor to the suit of a stockholder, in behalf

of the corporation, against Bank directors, for the negligent discharge of their duties, by which the corporation had sustained losses. *Wallace* v. *Lincoln Savings Bank*, 89 Tenn., 631, 15 S.W., 488."

The District Court was therefore reversed, and the case remanded for trial. It was then appealed to the Supreme Court of the United States, which Court affirmed the Sixth Circuit in an opinion written by Mr. Justice Holmes, and upon assignments of error, the question there was as to which statute of limitations applied. The Supreme Court affirmed the Court of Appeals. In the opinion of the Court Justice Holmes said:

> "Thus we come to the main question of the case, viz., which limitation, under the laws of Tennessee, is applicable, the matter being left to the local law by the silence of the statutes of the United States."

He then discussed the various statutes of limitation of Tennessee, and then said:

> "The Circuit Court of Appeals held that the case did not fall within 2772 (penalty), or 2773 (injuries to personal or real property), but only within Section 2776 (ten year statute), and therefore was not barred. Although this decision was appealed from, as this question involved the construction of local law, we cannot but attribute weight to the opinion of the Judge who rendered the judgment in view of his experience upon the Supreme Court of Tennessee."

The opinion of Mr. Justice Holmes distinguished between property and business. He said:

> "The chief argument relied upon is that this suit is for injury to personal property and was within

Art. 2773. It was pressed upon us that formerly the limitations addressed themselves to forms of action, that the actions upon a case, such as this, would have been barred under three years following Statute 21 J.A.C. 1, Ch. 21, Sec. 3, and that when a change was instituted by the mere doing away with the old forms of action it is not to be supposed that the change was intended to affect the substance, or more than the mode of suit, or time allowed. Of course it was argued, also, that this was an injury to property within the plain meaning of the word. It really said, on the whole, in view of its juxtaposition with the detention and conversion, that the phrase has a narrower intent, it may be that it has a somewhat broader scope than was intimated below, and that some wrongs are within it besides physical damage to tangible property. But there is a sufficiently clear distinction between injuries to property and 'injured in his business or property,' the latter being the language of the Act of Congress. A man is injured in his property when his property is diminished. He would not be said to have suffered an injury to his property unless the harm fell upon some object more definite and less ideal than his total wealth. *A trade mark, or a trade name, or a title, is property, and is regarded as an object capable of injury in various ways.* But when a man is made poorer by an extravagant bill we do not regard his wealth as a unity, or the tort, if there is one, as directed against that unity as an object. That does not go behind the person of the sufferer. We say that he has been defrauded, or subjected to duress, or whatever it may be, and stop there. It was urged that the opening article to which we have referred, expressed an intention to bar all civil actions, but that hardly helps the construction of any particular article following, since the dragnet at the end, 2776, catches all cases not 'expressly provided for'. On the whole case we agree with the Court below." 203 U.S., 390, 27 S. Ct., 65.

There has never been any change by any Court of the construction of these statutes, either in Tennessee or the Supreme Court of the United States. The judicial construction of the language used in the Tennessee Code was declared by the Supreme Court on December 3, 1906, which was the same construction placed by the Court of Appeals on December 8, 1903. Since that time, as pointed out earlier herein, the statute, so far as the language that is pertinent here is concerned, remains exactly verbatim to that which it was when the Supreme Court construed it. This language has been enacted by the legislature of Tennessee on four different occasions, first, the Code of 1958; second, the Code of 1932; third, in 1950, in the Supplement to the Code; and, fourth, in 1955, to take effect January 1, 1956, Tennessee Code Annotated.

In addition to these official enactments of this language in these sections of the Code, there have been a number of other Codes published in the State of Tennessee, which have always been accepted as authority. Among these was Shannon's Code; Shannon & Thompson's Code; and Williams' Code.

It will therefore be seen that since this statute was construed by the U. S. Court of Appeals by Judge Lurton, a former member of the Supreme Court of Tennessee, and by the Supreme Court of the United States, the same language has been re-enacted by the Legislature of Tennessee on three different occasions. At the time that each of these re-enactments were had by the Tennessee legislature, this construction by the highest Court of the land had been made, and under all rules of construction that which was placed on it by the Supreme Court was accepted by the Legislature as a proper construction of the statute, and its application.

This rule applies with great force where it has only been enacted one time, but in this instance it was re-enacted three times, and there has been no other construction of this statute in any manner that conflicts with that of the Supreme Court of the United States, since that opinion was delivered.

The above proposition of law is foreclosed in the State of Tennessee, and so far as we have been able to find it is a universally recognized proposition of law, both in the State Courts and in the Federal Courts. Tennessee Supreme Court has decided many times, that when an Act is passed by the Legislature which has already been construed by a high court, then that construction of the Act is practically the same as written into the Act, and becomes a part of it.

The Supreme Court, in the case of *Walker* v. *Bobbitt*, decided this identical proposition, and in that case that Court said:

> "It is a rule well established, and perhaps universally accepted by the Courts and text writers, that where a statute has received a judicial interpretation, and it is re-enacted, it will be presumed the legislature intended it should have the same construction which was given to the earlier statute. Black on Inter. of Laws, 369; Sutherland on Stat. Con., Sec. 255, 256 and 424; *Bates* v. *Sullivan*, 3d, 632; *Tennessee Hospital* v. *Fuqua*, 1 Lea, 608."
>
> *Walker* v. *Bobbitt*, 114 Tenn., 709.

The above case was decided by the Supreme Court of Tennessee, April Term, 1905. Many cases were decided by that Court later declaring the same principle of law. Then, again, in the April Term, 1932, the Supreme Court of Tennessee decided the case of *Miller*

v. *W. B. Kennedy*, 164 Tenn., 470. That case also held that this same principle applied with equal force where the statute was passed by the Legislature in the enactment of a new Code for the State, as if it was an individual Act of the Legislature. The first headnote in that case is as follows:

> "The judicial construction placed upon a statute forms a part of the re-enactment of the same statute, either alone or as a section of a Code."

In the opinion of the Court, which was delivered by Mr. Justice Swiggart, we finde the matter very clearly stated, as follows:

> "In taking the position that the incorporation of Sec. 8983 in the Code of 1932 should be given the effect of a unifying judicial construction, as if the section had originated with the new Code. Counsel for appellant overlooked the well defined pattern of judicial conduct that a settled judicial construction of a statute has almost the same authority as the statute itself, and that when a statute has received a judicial interpretation, and subsequent re-enactment of the same statute, either alone or as a section of the Code, creates the presumption that the legislature intended that the new enactment should receive the same construction which was given to the earlier statute. The rule is sometimes stated that the judicial construction which had theretofore been placed upon a statute, forms a part of the re-enactment. *Hayes* v. *Kelley*, 111 Tenn., 294, 76 S.W., 893; *Walker* v. *Bobbitt*, 114 Tenn., 700; 88 S.W., 327; *Smith* v. *Parks*, 115 Tenn., 128, 89 S.W., 392; *Hunter* v. *Harris*, 154 Tenn., 590, 288 S.W., 355."

There is no case in Tennessee that changes or alters the above decision, but it is the law in this state, and has been for many, many years, and so far as we have

been able to find, it is the law in all other states, and Federal Courts. The statute to be construed herein was re-enacted three times by the legislature of Tennessee after the construction thereof by the Supreme Court of th United States in a Tennessee case, construing this very statute, the language being verbatim and during that fifty odd years, there has never been a change by the Courts of Tennessee, and it has been accepted by the members of the profession as the final construction of the statutes, and as the existing law in this state.

Therefore, we insist that this Chattanooga Foundry case is the law in the present case.

It is influential to understand that the language used in the antitrust Act that was involved in the Chattanooga Foundry case is identical with the language used in the Taft-Hartley Act, which authorizes suits for the violation of said Act.

The provisions of the Sherman Act, which was under the scrutiny of Justice Holmes, read as follows:

> "*Any person who shall be injured in his business or property* . . . shall recover."

Now the Taft-Hartley Act authorizing suits, also reads as follows:

> "*Whoever shall be injured in his business or property* by reason of any violation . . . shall recover the damages by him sustained. . . ."

Therefore, it is seen that the language of the two statutes are exactly the same, so far as the authorization of bringing suits for damage is concerned. Both acts clearly make a distinction between "business"

and "property", just as Mr. Justice Holmes did in the Chattanooga Foundry case, and this is exactly what the Mining Company sought to recover for in this case, viz., "damage to its business."

It is interesting to note at this time that adversary counsel recognized the difference between "property" and "business", we are sure it was inadvertent, but he asked witness W. E. Morgan on cross-examination, the following question: "No damage was done to any of the property around the mine, was there? (Answer) Not that I remember. No, sir." (R. 311a)

The Supreme Court of Tennessee has never construed either of these statutes in any way in the least contrary to that determined by the Supreme Court in the Chattanooga Foundry case.

The petitioner seeks consolation from the case of *Sanford Day Iron Works* v. *Foundry & Machine Co.*, 138 Tenn., 437. As the Trial Judge stated in his findings of law, and the Court of Appeals likewise, that the Sanford Day case did not construe the statute involved herein. Said statute was not before the Court in that case, but an entirely different statute. It was only on the question of the jurisdiction of the Chancery Court, and had no reference to the statute of limitations. As a matter of fact, the question involved in that case not only did not involve the limitation statute, but it was an entirely different set of facts. The party that was seeking the jurisdiction of the Chancery Court in that case did so, notwithstanding that the chief matter involved was the "good will," concerning which the Supreme Court of Tennessee said:

> "If this argument be granted to be sound, then 'good will'," equally with credit, is property in the

> sense of being a thing subject to damage . . . It is a thing that may be bought and sold in connection with the business in which it inheres, and sometimes it is so valuable as to be the larger part of the marketable value of the business."

In the opinion of Mr. Justice Holmes, in the Chattanooga Foundry case, several years before the Sanford Day case was decided by the Tennessee Court, commented on the very thing that the Supreme Court said was the chief question in the Sanford Day case, viz., "good will." On this proposition Mr. Justice Holmes said:

> "A trademark, *or a trade name*, or a title, is property, and is regarded as an object capable of injury in various ways."

So, it will be seen that the Sanford Day case could have no effect, first, because it does not involve the same statute or the same problem; and, second, the chief grounds upon which the Sanford Day case was determined was distinguished, viz., "trade name or good will," by the Supreme Court, who held that it would not have any effect upon the question of damage to business. Now it will be noted that Judge Lurton stated, in his opinion, that while this precise question had never been determined by the Supreme Court of Tennessee, but that the trend of that Court was as he decided that case, and at that time he cited two cases which probably had been decided by the Supreme Court while he was a member.

We have read every case decided by the Supreme Court of Tennessee on this question since the decision by the Supreme Court in 1906, and we cited each and every one of these cases, and a short statement as to what they held in each and every one of them in our

brief in the Court of Appeals. Afraid of making this brief too long, we will not cite these cases, but simply state that there were sixteen of them that we read and cited in our brief, and each and every one of them show a trend the same as that mentioned by Judge Lurton in his opinion in the Chattanooga Foundry case.

We will only quote from one case, which really is a quotation from the case decided by the Court of Appeals of the Sixth Circuit. It is that of the *Commercial Standard Insurance Company* v. *Gordon Transports*, 154 Fed. (2d), 390. This is a case from Tennessee, in which the ten-year statute of limitations was plead, and in that opinion Circuit Judge Simons stated:

> "As interpreted in *Barnes* v. *Barnes*, 157 Tenn., 332, 8, S.W. (2d), 481, the effect of this statute is that if one who is injured by mistake in the drafting of a contract, permits ten years to elapse without discovery or suit, said action is barred, and the bar of limitation starts to run upon the execution of the instrument, and not from the date the mistake is discovered, or should have been discovered."

Since reflecting, we will cite the cases, but not comment on them, which show the trend of the Tennessee Supreme Court, as suggested by Judge Lurton. *Bruce* v. *Baxter*, 7 Lea, 477; *Ramsey* v. *Temple*, 3 Lea, 253; *Alvis* v. *Oglesby*, 87 Tenn., 172; *Hughes* v. *Brown*, 88 Tenn., 578; *Wallace* v. *Lincoln Savings Dept.*, 89 Tenn., 630; *Ballard* v. *Scruggs*, 90 Tenn., 585; *Scott* v. *Wagstaff*, 120 Tenn., 352; *Blackwell* v. *Railroad*, 124 Tenn., 516; *Byrns* v. *Turnpike Company*, 127 Tenn., 327; *York & Robinson* v. *Byars*, 131 Tenn., 38; *Barnes* v. *Barnes*, 157 Tenn., 332; *Commercial Standard Insurance Co.* v. *Gordons Transports*, 154 Fed. (2d), 390;

Edgar Henderson v. *Lucy Henderson*, 138 Tenn., 452; *State, ex rel.* v. *Abernathy*, 159 Tenn., 175; *Jordan* v. *Johns*, 168 Tenn., 525; *City of Knoxville* v. *Gervin, et al.*, 169 Tenn., 532.

This statute of limitations was construed by the U. S. Court of Appeals, Sixth Circuit, in 1903, and by the Supreme Court in 1906, in which it was held that "damage to one's business" was not affected by the Statute of Limitations of three years, but the ten-year statute of limitations applied. This case has never been overruled or criticized in any case affecting this statute, either in any Federal Court or in the Tennessee State Court. It has been recognized by the profession as the law, all of these years, and acting upon this, they have so advised their clients when the ten-year statute applied to such a case. This very thing was done in this lawsuit, as the writer of this brief knows, and the law so accepted by the attorney representing the Mining Company, as declared in the Chattanooga Foundry case. It certainly would be unfair to it if any other construction should be placed upon the application of said statute. He relied upon this construction of this statute and had a right to do so. No Court in Tennessee has construed this statute otherwise, and all indications are that the construction of the Supreme Court in the Chattanooga Foundry case has been accepted as final. The very fact that all of this time has expired, more than fifty years, since the decision of the Supreme Court, that no case involving this question has been made necessary for the Supreme Court of Tennessee to pass upon, clearly shows that the members of the legal profession of Tennessee have accepted the decision of the Supreme Court of the United States and the three time re-enactment of the same statute, as the proper construction of the statute.

The Mining Company respectfully insists that the construction of the Act as announced in the Chattanooga Foundry case by the Supreme Court of the United States, which has never been changed, altered, or affected in any manner, is the law applicable to this case.

PETITIONER'S QUESTION NO. 3

This question stated in the petition is whether or not there is sufficient evidence in the record to support the District Court's award of compensatory damage in the amount of $300,000.00.

It is clear, as we insist, as found by the District Court, and the Court of Appeals, that the sum of $300,000.00 is reasonable and fair, and was supported by all of the evidence on this proposition, because there was no evidence offered by the petitioner undertaking to show less damage than this amount, in fact, we insist that under the concurrent findings of fact, supported by the proof, the award for compensatory damages was indeed most conservative. In fixing this amount of damage the District Court was sitting as a jury. Under either aspect of the case, the secondary boycott under the Taft-Hartley Act, or the common law conspiracy, compensatory damages are recoverable.

> 29 U.S.C.A., 187; *Patton* v. *United Mine Workers of America*, (1953), 114 Fed. (2d), 396; *U.M.W. of A.* v. *Lambert* (1954) 219 F. (2d), 487; *United Construction Workers* v. *Laburnum Construction Corporation*, Supra; numerous other Federal cases, and an abundance of Tennessee cases, many of which were quoted heretofore in this brief.

Courts have held numerous times that there is no necessity required for exact certainty in the proof of damages in a case of this kind. This proposition is so clearly stated by Judge Parker in the *United Mine Workers of America* v. *Patton*, 211 F. (2d), 742 (Fourth Circuit), that we quote from this opinion as follows:

> "Another argument is that no damage has been shown, because it is said that the three-year lease had not been delivered, and future profits of the business, which plaintiffs were forced to abandon, were purely speculative. We think, however, that the evidence sufficiently showed that plaintiff had established a profitable business under the arrangement they had with Clinchfield, and that, irrespective of the three year lease, a sufficient basis had been laid for an award of damage."

This same principle has been determined by this Honorable Court in the case of *Story Parchment Co.* v. *Patterson Parchment Paper Co.*, 282 U.S., 555, 51 S. Ct., 248. In the opinion the Court said:

> "Where the tort itself is of such a nature as to preclude the ascertainment of the amount of damages with certainty, it would be a perversion of fundamental principles of justice to deny the relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts. In such case, while the damages may not be determined by mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate. The wrongdoers are not entitled to complain that they cannot be measured with the exactness and precision that would be possible if the case, which it alone is responsible for making, were otherwise."

In the Patton case Judge Parker further said:

> "It was proper for the jury to consider damages resulting from the destruction of plaintiff's business. . ."

Also, in that same Patton case, the Court of Appeals approved a charge of the District Court to the Jury, as follows:

> "If you believe that their (Plaintiff's) mining operation had run for a sufficient length of time to be considered as an established business, then you may include in your verdict such a sum as you believe would reasonably compensate them for the loss of profits which they would have earned . . . while the amount of profits earned during the period during which plaintiffs did operate, is not conclusive, you may consider past earnings as a reasonable basis for calculation of what the future profits would have been; in any event, your verdict for actual damages should not exceed the amount sued for."

In another case involving the principle involved in the case at bar, concerning damages, the sum of $750,000.00 compensatory damages, costs, and minimum attorney's fee of $10,000.00 were awarded by a jury in Alaska Territorial Court dispute, which award was affirmed by the Court of Appeals, (Circuit 9) 189 F. (2d), 177, and was affirmed by the Supreme Court. *International Longshoremen & Warehousemen Union* v. *Juneau Spruce Corporation* (1952), 72 S.Ct., 235.

Let us see something of the real truth in this case concerning the amount of damage suffered by the Mining Company.

FINDING OF FACT NO. 37. (R. 41a)

It has been concurrently determined that on January 12, 1948, when the mine was closed by the mob, that the mine was in good condition, and an unusual vein of coal, averaging 5½ feet in thickness, working conditions were good, and had been for some time prior thereto, and was producing over 1000 tons of coal per working day, with a prospect for increase.

FINDING OF FACT NO. 38. (R. 41a)

The two Courts found that during the year 1947, that 217,179.77 tons of coal was produced and sold on the market, about one-third of which was transported by truck, and the remainder by railroad, and at the end of the year 1947, the Mining Company had made a net profit on the business for that year of $374,149.17. In Finding of Fact No. 39 it was further determined that the Mining Company had new contracts going into effect January 1, 1948, and continuing through 1948, with the Tennessee Valley Authority for a large quantity of coal to be shipped daily, and for which the Company was to receive $5.00 per ton, f.o.b. mine, which was $1.00 more than the former contract, and this was only for what is termed as "fines" or "slacks."

It also found that the price the truck coal at the mines, as sold from January 1 to January 12, 1948, when the mob closed the mine, was $5.91, and that the price continued to increase during the year 1948 for that kind of coal, that the average price for that coal mined and sold in 1948, transported by truck, was an average of $7.55 per ton. (R. 41a)

FINDING OF FACT NO. 40. (R. 41a)

In Finding of Fact No. 40, the Mining Company's mine was operated 9 days, from Jan. 1 to Jan. 12, 1948, and the coal that was produced during those nine days was sold for a net profit of $30,109.71, which was an average of $3.15 per ton net profit.

Detailed statements appear in this record that are not only testified to by the officers of the Mining Company, but were positively proven by the copies of audits that were made by certified accountants. The truth of the business is that there was no evidence of any type or character that denied a single statement of fact proven by the Mining Company concerning its losses.

For the month of December, 1947, the mine produced and sold 23,759.75 tons, which sold for a total amount of $138,365.97, an average of $5.83 per ton. To produce this coal cost $69,998.36, which showed a net profit for the month of December, 1947, of $68,367.61, or a net profit of $2.88 per ton for that month. (R. 66a)

The nine days that the mine was operated from January 1, 1948, until it was closed on January 12th, the mine produced and sold 9,649.05 tons at an average price of $5.93 per ton f.o.b. mines, which brought $57,170.49. To produce that coal during those nine days cost $27,060.78, which showed a net profit for those nine days of $30,109.71, which was a net profit for each of those nine days of $3345.33, and that was an average of 1050 tons of coal per day. (R. 66a-69a)

The proof clearly shows that coal from the beginning of 1947 on through 1948 gradually enhanced in the value of the coal on the market, and that these two

years, and especially 1948, were the two best years of the coal operators in this area since the First World War. As illustration of these increases in price, in April, 1947, the average price of coal sold was $3.74 per ton. (R. 78) September, 1947, the average price per ton of coal sold was $5.19, and in December, 1947, the average price was $5.83 per ton, and the average price for coal sold in January, 1948, was $5.93 per ton. (R. 70a).

It is also well to remember that during 1948, on account of the unlawful and violent interference of the petitioner, the Mining Company only produced for that whole year of 1948, 73,339.85 tons, which sold at an average price, including the fines, of about $5.87 per ton, which made a total of $430,011.60, whereas, for coal sold during 1948, that showed a total cost for that year of $337,492.35, which showed a net profit before depreciation of $92,519.25. (R. 72a) This showed a net profit, after allowing depreciation, and before taxes, of $73,415.32. (R. 959a-961a) The auditor's report on all these figures will be found in the record at 893a-906a).

It is also well to note that, on account of the interference of appellant when closing down the mine, that the Mining Company actually lost in actual cash paid out to take care of the mines from January 12, 1948, the following sums:

January, 1948, $9,682.72 (R. 72a); February, 1948, $3,906.65, (R. 72a); March, 1948, $4,375.01, (R. 74a); April, 1948, $8,573.13, (R. 74a); May, 1948, $5,068.05, (R. 74a); June, 1948, $9,737.99, (R. 74a).

The above figures do not represent, of course, any loss of profit for the months the mine was closed, but it actually lost in cash a total of $41,348.55.

It was shown by three different witnesses, viz., W. T. Ray, President, W. E. Morgan, and Manuel Powell, who is largely in charge of production, that considering everything, there is no reason why that 300,000 tons of coal should not have been produced for the year 1948, except for this unlawful interference, and that that coal would have been sold for from $2.50 to $3.00 a ton net profit, which would have made a net profit to the Company for the year 1948, before taxes, of $750,000 to $900,000. (R. 77a-297a-298a).

Therefore, it seems to us that under the conditions that existed, the fine condition of the mine, the unusual seam of coal, and the fine relations between management and labor at the time this mob closed the mine, to say that under these conditions that $300,000.00 compensatory damages is not justified, is just simply a statement out of the air. There is nothing in the record, from beginning to end, that would justify any such statement. A very much larger amount could have been allowed by the two Courts as compensatory damage, and been truly justified by the facts in this case, but the Courts were exceedingly conservative. There can be no doubt that under conditions of this kind that damages can be based upon future profits, as has been determined by the Federal Courts, including the Supreme Court, and it is also allowed in Tennessee. There are many cases in Tennessee that apply the rule in a case of this kind, as stated by the Court.

"The law does not require exactness of computation of damage in suits involving operations of damages growing out of contracts or tort."

Provident Life, etc., Ins. Co. v. *Globe Indemnity Co.*, 156 Tenn., 571.

Again:

"In estimating profits it is proper to take into consideration past profits and earnings as furnishing criteria for estimates."

Donnelly v. *Jackson Bros.*, 2 Tenn. Civ. App. (Higgins), 408-416.

There is also a principle of fixing damages of this kind recognized in Tennessee, and that is, that proof may be of such nature that it might be speculative at the time of suing, and not provable, but later becoming ascertainable and fixed; that is, where the profits were speculative damages at the time of the filing of the bill, but became ascertainable before the trial, such profits are recoverable.

Hagan v. *Nashville Trust Co.*, 124 Tenn., 903.

Now it is to be remembered that the Mining Company in this case did not own the land from which the coal was being taken, but only was operating under a lease. The time for the lease was reasonably short. The lease is in the record that was filed with the Court of Appeals, but has not come into the record in this Court, but the lease was limited to a period of five years from the time this mine was closed on January 12, 1948, with the right of renewal one time, and it was impossible for this Mining Company to have mined all of the coal out of that land in that length of time, because the lease covered a large acreage of land, of some 1250 acres, therefore, whatever was lost during the year 1948 was lost forever to the Mining Company, and not

only that, but there never was a price anything like as high from that time until this good day. Coal immediately began to decline in 1949 and has continued to stay low ever since, and there is no way in the world that this Mining Company could recoup its losses brought about by these unlawful acts of the petitioners.

The Trial Judge was sitting as a jury, and he has fixed this amount of compensatory damage, and the same was approved by the Court of Appeals, and it is supported abundantly, not only by a portion, but by all of the proof in this record, because there is none to the contrary.

There is a principle of law in Tennessee, which probably prevails most everywhere else, that in a case of this kind it is the duty of the person who is being imposed upon to use every reasonable effort to mitigate the damage, and certainly the management of the Mining Company did this, more or less to the extreme, in this case. After they had spent much time and a great deal of money trying to operate the mine, and saw they could not do it successfully, they then set up another corporation to produce the coal for it, thinking this would reduce the animosity exhibited by the representatives of the petitioner, especially against Mr. Ray, the President of the Company, whose life had been threatened many times. Many deadly threats had been made against Mr. Ray, without any cause whatsoever, and he thought if he would disassociate himself with the actual operations in the mine, it might have some effect, and he set about to reduce as much as possible the damage his Company was suffering.

There are several cases in Tennessee that hold that it is the duty of the person being damaged to minimize

the damage as much as he reasonably can. We cite the case of *Farabee-Treadwell Co.* v. *Union Planters Bank & Trust Co.*, 135 Tenn., 208, and *Packet Co.* v. *Hobbs*, 105 Tenn., 29.

Under all the conditions and circumstances, as shown in the proof and found by the two Courts, the judgment of $300,000.00 compensatory damage was allowed, and it was certainly exceptionally conservative, and it was well supported by all the proof and findings of fact by the two Courts, and could have been a much larger amount, and still justified.

The Mining Company, therefore, insists that there is no merit in Petitioner's Question No. 3.

PETITIONER'S QUESTION NO. 4

The chief complaint of petitioner, as to the amount of punitive damage, does not seem to us to be very forceful. In fact, it only appears that the petitioner is dissatisfied with the amount given against it, and would like to have it lowered, but does not assign any real reason in the petition why it should be done.

It is the insistence of the Mining Company that this is a typical case for punitive damage under the laws of Tennessee. Every act performed by the representatives of the petitioner, and the effect of practically all that they had to say, was unlawful, right from the beginning. The representatives of petitioner, led by J. W. Ridings, had worked, according to their statements, sixteen months from the fall of 1946 until late December, 1947, and having made a dismal failure in organizing the employees of the Mining Company, they decided to do it in an unlawful manner; in other words, they conspired with those members of other locals, and

doubtless with higher officials of the petitioner, to close the mine by force, and unlawful means. The first act in the furtherance of this conspiracy was to notify the members of the Locals in a radius of about 100 miles from the mine involved herein to meet at Sparta, Tenn., 22 miles away from this mine, and from there to march in a motorcade on this mine. (Find-Fact No. 6, R. 33a)

Now, in order to put the management of the Mining Company off their guard, J. W. Ridings and Mr. Brown, who had been undertaking to organize these employees for a period of sixteen months, called on W. T. Ray at his home, the President of the Mining Company, on the 9th day of January, 1948, for no purpose except to deceive him. They did not undertake to get him to sign a contract, they did not present any contract, but misrepresented deliberately the number of employees of the Mining Company that belonged to the Union at that time. Mr. Ray received them most friendly, and invited them back. They promised to come back soon. But, in the furtherance of this conspiracy, about two hundred of them marched on the mine for no purpose on earth except to close it illegally, through fear, through force and violence, and to put the employees in such fear that they would not return to work, threatened them in many ways, scared the truck drivers of some 500 trucks so badly they would not return, and didn't return, a single one of them, until July 14th, more than six months after, and after the petitioner's representatives had forced an illegal contract to be made, because it was a closed shop contract, and violated the laws of Tennessee, hereinbefore cited, and therefore the Taft-Hartley Act.

Now this was done deliberately, could not have been otherwise. They made this raid on the mine when they

knew that it was the best market on coal that the management had had since the first World War, evidently picked this time on purpose.

The Trial Court and the Court of Appeals found as a fact, as set out in Finding of Fact No. 36 (R. 40a), the following:

> "The defendant, in closing the plaintiff's mine and keeping it closed by force, by threats of bodily harm, and by acts of violence, and in conspiring with its members to accomplish the same purpose, acted wilfully and wantonly, and with the intention to damage the Plaintiff's business."

This finding of fact is supported by practically all the proof offered in this case, which is many pages. How any reasonable explanation can be made of the visit of J. W. Ridings and Mr. Brown to the home of W. T. Ray, on January 9th, except that it was done for the purpose of deceit, and to place the mine owners absolutely defenseless on the day that the mob appeared, seems to us can be reasonably considered in no way except wantonly, wilfully and maliciously. This being true, as it undoubtedly is, and as both the lower Courts found it to be, then it comes directly and positively and typically under the laws of Tennessee, which give the right to punitive damage.

The Supreme Court, in the case of *Railroad* v. *Ray*, 101 Tenn., 6, said:

> "Exemplary or punitive damages are given as a punishment for fraud, gross negligence, or oppression. They are not based upon the nature and the extent of the injury, so much, as they are upon the oppression of the party, who does the injury, and the basis is not so much compensa-

tion for any special injury, as it is punishment for a mala fides of the party doing the injury, and is imposed upon him on grounds of public policy."

The reason of the award is that the damages should be such as not only to remunerate or compensate the plaintiff, but to operate as a punishment of defendants, and to deter others from like offense."

Polk v. Fancher, 38 Tenn., 336.

"Where fraud, malice or gross negligence, or oppression intervenes, the law blends the interest of society and of the aggrieved individual, and gives damages such as will operate as an example or warning to the parties, or others, to deter from similar transactions."

Telephone, etc., Co. v. *Shaw*, 102 Tenn., 313;
Cox v. *Comley*, 73 Tenn., 529;
Many other Tennessee cases holding the same thing.

Corporations are liable in punitive damages for wrongs of their servants, or things done within the scope of their employment.

Memphis St. Ry. Co. v. *Stratton*, 131 Tenn., 622;
Haley v. Mobile, etc., R. C., 66 Tenn., 240.

The pecuniary ability of the wrong-doer may go in evidence where there is any ground or reason for punitive damages.

Cumberland, etc., Telephone Co. v. *Poston*, 94 Tenn., 696;
Dush v. *Fitzhugh*, 70 Tenn., 307.
And many other cases.

In the trial of this case the petitioner was called upon to file a business statement, showing its assets. It brought in and filed a financial statement showing it had at that time in cash in bank and bonds, only,

considerably more than twenty million dollars. This did not give any consideration to other types of property. The allowance of punitive or exemplary damages is a matter of discretion with the jury. Any verdict of the jury will very rarely be reversed or interfered with by the Appellate Court in Tennessee.

Simpson v. *Markwood*, 65 Tenn., 340; also, *Ferguson* v. *Moore*, 98 Tenn., 342.

There are many, many cases in Tennessee that uphold the right to punitive damages. It is as well established in the laws of the State of Tennessee as most any principle of law that can be thought of, and if a judgment is at all in reason, the Appellate Court never interferes with the verdict of the jury. Of course the Trial Judge here was sitting as a jury.

There is a very recent case decided by the Supreme Court of the United States involving the question of punitive damages under the State law. We refer to the case of *International Union, United Automobile, Aircraft and Agricultural Employment Workers of America, (U.A.W. and C.I.O.), et al.*, v. *Paul S. Russell*, 78 S. Ct., 932.

In that case Mr. Justice Burton quoted with approval the Laburnum case, in which an award for $100,000.00 as punitive damage under the laws of the State of Virginia was made, and on this proposition Mr. Justice Burton, for the Court, said:

> "The employer filed a tort action in the Virginia Court, and received a judgment for about $30,000.00 compensatory damages, plus $100,000.00 punitive damages. On petition for certiorari, we upheld the State Court's jurisdiction, and affirmed its judgment. We assumed that the conduct of the Union constituted a violation of

> Sec. 8(b)(1)(A) of the Federal Act. Nevertheless, we held that the Federal Act did not expressly or impliedly deprive the employer of the common law remedy in tort for damages."

It is well to observe that in the above quotation, Mr. Justice Burton said that the Court *assumed* that the Taft-Hartley Act had been violated. Now certainly the Court can see from the facts found in this case that the Taft-Hartley Act was violated herein, which of course was not necessary in order for judgment to be given to the Mining Company under this State law involved in this same cause of action that was before the Court, and gave that Court jurisdiction to pass judgment under the State law, or under the Taft-Hartley Act, or under both.

In that same opinion Mr. Justice Burton said:

> "Punitive damages constitute a well settled form of relief under the law of Alabama, when there is a wilful and malicious wrong."

There is no State in the Union where the form of the law concerning punitive damages is more settled than that of the State of Tennessee. In that same case Mr. Justice Burton also said:

> "The power to impose sanctions is within the jurisdiction of the State Courts."

Mr. Justice Burton also said:

> "There was much conflict in the testimony as to what took place in connection with the picketing, but those conflicts were resolved by the jury in favor of Russell. . . . This leaves no significant issue of fact for decision here."

The District Court, sitting as a jury, in the case at the bar, determined the question, and allowed punitive damage, and determined the amount that was awarded because of the unlawful, wilful, and wanton conduct on the part of the petitioner through its representatives. The Trial Judge saw the witnesses on the stand, and understood the real situation as no one else could possibly do who did not see the witnesses.

Considering all of the facts from the beginning to the end, as shown by the proof, and found by the two Courts, which clearly demonstrates the wilful and malicious conduct on the part of the petitioner, and petitioner's representatives, that caused great damage, and tore up a whole community, if there ever was a case for punitive damages in a substantial sum, to fulfill the reasons for punitive damage, we insist it is this case, and we insist, also, that the amount allowed by the Trial Court, and approved by the Court of Appeals, is certainly not only not excessive, but is indeed very conservative, and we cannot see any merit in the petition, which asks the Court to reduce this amount.

We therefore insist that there is no merit in Petitioner's Question No. 4, as set out in its petition.

PETITIONER'S REASONS FOR GRANTING THE WRIT

1. The petitioner insists that the District Court did not have jurisdiction to hear and determine this case. We feel that this question is thoroughly answered hereinbefore in this brief. We do not deem it necessary to make any further argument concerning the same. The consideration of this question begins in this brief at page 35.

2. The petitioner asks in its petition that the writ of certiorari be granted because, it says, that the cause of action under the laws of Tennessee concerning unlawful civil conspiracy, and the action for damage to the business of the Mining Company under the Taft-Hartley Act are two separate and distinct causes of action. We have also treated this question heretofore in this brief, and we insist that there could only be one cause of action growing out of the facts as they were found by the two Courts, and as they really are, which violate both the Taft-Hartley Act and the common law of Tennessee, which gives only one cause of action, viz., damage to the business of the Mining Company. We have fully covered this matter heretofore in this brief, to which we respectfully refer the Court to pages 35-46, etc.

We desire to only cite and quote from one additional case, to those covered hereinbefore, and that is the case of *American Fire & Casualty Co.* v. *Finn.* 71 S. Ct., 539. The opinion in this case was delivered by Mr. Justice Reed, and he quotes with approval the case heretofore cited in this brief of *Baltimore Steamship Co.* v. *Phillips, supra.* This was a case involving the Removal Statute, being 28, U.S.C.A., Sec. 1441. Mr. Justice Reed said, which is quoted from the Baltimore Steamship case:

> "Upon principle, it is perfectly plain that the respondent suffered but one actionable wrong, and was entitled to but one recovery. Whether his injury was due to one or the other of several distinct acts of alleged negligence, or to a combination of some or all of them, in either view there would be but a single wrongful invasion of a single primary right of the plaintiff, viz., the right of bodily safety, whether the acts constituting such invasion were one or many, simple or complex.

"A cause of action does not consist of facts, but of the unlawful violation of a right which the facts show."

Then, commenting, Mr. Justice Reed continued:

"Considering the previous history of 'separable controversy,' the broad meaning of 'cause of action', etc., we conclude that where there is a single wrong to plaintiff, for which relief is sought, arising from an interlocked series of transactions, there is no separate and independent claim or cause of action under Sec. 1441(c)".

Mr. Justice Reed also said in that case:

"In making this determination we look to the plaintiff's pleading, which controls."

See also *Pullman Co.* v. *Jenkins*, 303 U.S., 524, 59 S. Ct., 347.

There could only be one cause of action vested in the Mining Company in this case growing out of its right to carry on a lawful business, and the same was unlawfully and by force interfered with, and damaged very greatly. There are many facts that bring about this cause of action, but after all there is only one cause of action, viz., the unlawful interference with the Mining Company's right to carry on a legal business. It is, therefore, our insistence that there is no merit in this reason presented by the petitioner, for the granting of the petition.

3. The petitioner undertakes to state that there is a discrepansy in the holding of the two Circuit Courts of Appeals in the Sixth Circuit, and the Fourth Circuit, and mentions the Patton case to support the same. There is absolutely no conflict between the decision in the case at Bar and the Patton case, in fact, the opin-

ion of the Sixth Circuit in this case cited with approval the Patton case. The Patton case did not hold that punitive damage was not allowable and could not be recovered under the State law; but held only that punitive damage could not be recovered under the Taft-Hartley Act. In that case the complaint was limited to the right of recovery for damage, sustained by reason of violation of the Taft-Hartley Act. It did not seek recovery for punitive damage under the State law.

This matter of Federal Court having jurisdiction of a case, has jurisdiction to determine the whole case where there is only one cause of action, has been fully covered by this brief, beginning at page 35.

We insist this is no ground for granting the petition, because there is nothing new about it that has not been fully determined by this Court.

4. Petitioner cites, as a reason for the granting of this petition, that the District Court did not affirmatively declare that the Taft-Hartley Act was violated, and therefore the Norris-LaGuardia Act applied.

We insist that there is no merit in this claim. In the first place, the Norris-LaGuardia Act has no application to the case, and, secondly, if perchance there could be any reason why the Norris-LaGuardia Act should have some application, it has been fully complied with, as found by the two Courts in determining the facts in the case, and they found such as to fully comply with the requirements laid down by this Honorable Court in the case of *United Brotherhood of Carpenters and Joiners* v. *United States, Supra,* which we have discussed in this brief beginning at page 58. Therefore, we insist that there is no merit to this claim.

5. The petitioner claims that on account of the amount of compensatory damages allowed that this Court should review the lower Court. The facts in this case abundantly support the amount of compensatory damage, and the same was fixed by the District Court, sitting as a jury, and approved by the Court of Appeals.

The truth is there is no proof in the record opposing the amount of damage. We insist that we have heretofore considered this proposition, beginning at page 80 and that there can be no merit in this claim why petition should be granted.

6. They raise the question that the punitive damage is too high. The right to punitive damage in Tennessee is thoroughly established and fixed, and considering the financial worth of the petitioner, the conduct engaged in by its representatives, the amount fixed was conservative indeed. Under this heading petitioner states, in its brief, at page 63, that there was no evidence in the record to support the findings of fact by the two Courts, that there was a purpose to close down the mine by force on January 12, when, as a matter of fact, the record is replete with such testimony.

It is very clear from this record that this was a well organized, well defined scheme to close this mine by force, and many, if not all of those in the mob, were told, evidently, what to do, what to say. Each member of this mob seemed to know his assignment. Some blockaded the road from the State highway to the mine and guarded the blockade, some armed with guns viciously threatened truck drivers out on the highway and would not let them enter the road to the mine, 1500

feet away, for coal, and forced the drivers to turn and go back empty, groups of four to five would surround employees of the Mining Company and threaten them and their families if they worked any more without a Union contract, and these would have knives in their hands while making the threats, and many other disorderly and violent threats and actions. It is abundantly sufficient to justify such fiindings of fact alone upon the deceitful visit of Ridings and Brown to the home of Mr. Ray three days before this raid, and the first ones that arrived, when stepping out of their car, immediately broke the news that they had come to close the mine until a contract was signed with the Union without any election. Petitioner persists in making the statement in its brief that there were many members of the employees of the Mining Company who were members of the Union, before January 12th. Now that is absolutely incorrect. The record shows that there were only five members of the Union that were working for the Company on January 12, and the evidence clearly shows that the alleged card signing before January 12 was a hoax without foundation.

It is the insistence of the Mining Company that there is absolutely no merit to this claim.

It is the insistence of the Mining Company that there is not a single proposition of law involved in this case that has not already been determined definitely by this Honorable Court. It is also our insistence, to which we do not think there can be any answer, that the facts of the case have been properly and judicially determined, first, by the District Court, sitting as a jury, and observing the witnesses on the stand, and seeing all the circumstances under which the testimony was presented, and then in a detailed form by the Court

of Appeals, which evidently gave the record great consideration, as the opinion demonstrates by detailing the facts, as shown by the District Judge in the opinion.

Therefore, it is our insistence that there is no merit in the petition for the writ of certiorari, and should be denied.

CONCLUSION

The Mining Company was not in the least degree responsible for the labor trouble that developed in this case. The employees were happily situated, and the finest relations existed between the management and the employees. The employees had nothing whatsoever to do with the raid that was made on the mine, and knew nothing about it, and did not welcome it. The management, largely through Mr. Ray, had always demonstrated, as this record shows, that if his employees preferred to organize a Union, and have a contract of employment, with it, it was entirely agreeable to him. When Ridings and Brown called upon him on Jan. 9, 1948, for no purpose on earth except to put him off guard, and to assure the success of the mob, that was already arranged to make its attack, three days later, and of which Mr. Ray did not have even the slightest hint, but told these representatives of petitioner that if a majority of his employees desired the Union, that was entirely agreeable to him, and invited them back to talk to him any time they saw fit, and they told him they would be back, but it is to be noted that from January 9, 1948, none of them came back to see Mr. Ray until the latter part of June, 1948, and that engagement was brought about by the Governor of Tennessee to prevent "a great calamity".

The whole explanation of the conduct of the petitioner herein through its representatives was that it had failed to interest a majority, or in fact any appreciable number of employees of the Mining Company, to join the Union, and decided to do it in the manner in which it has adopted in many, many cases theretofore, and that was to do it unlawfully and by force and violence. As a direct result of the acts of violence and threats, etc., of petitioner, the owners of 500 trucks were forced to cease doing business with the Mining Company, because their drivers had been put in such great fear that they refused to return to the mine for coal. That this same result happened to the employees of the Tennessee Central Railroad Co., that caused it to refuse to furnish railroad cars to transport the coal, and also an effort to accomplish the same purpose with the Tennessee Coal Co.

It is the confident insistence of the Mining Company that there is no merit in the petition for certiorari, and it most respectfully asks the Court to deny the same, and make final the judgment of the Court below.

Respectfully submitted,

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